

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





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**74-2533**

**United States Court of Appeals**

**For the Second Circuit.**

UNITED STATES OF AMERICA,

*Appellee,*

*-against-*

JOVANA GUARDI,

*Appellant.*

On Appeal From The United States District Court  
For The Southern District Of New York

**Appellant's Appendix**

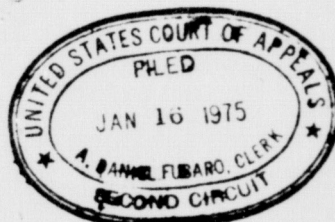
STEVEN D. SLEPIAN

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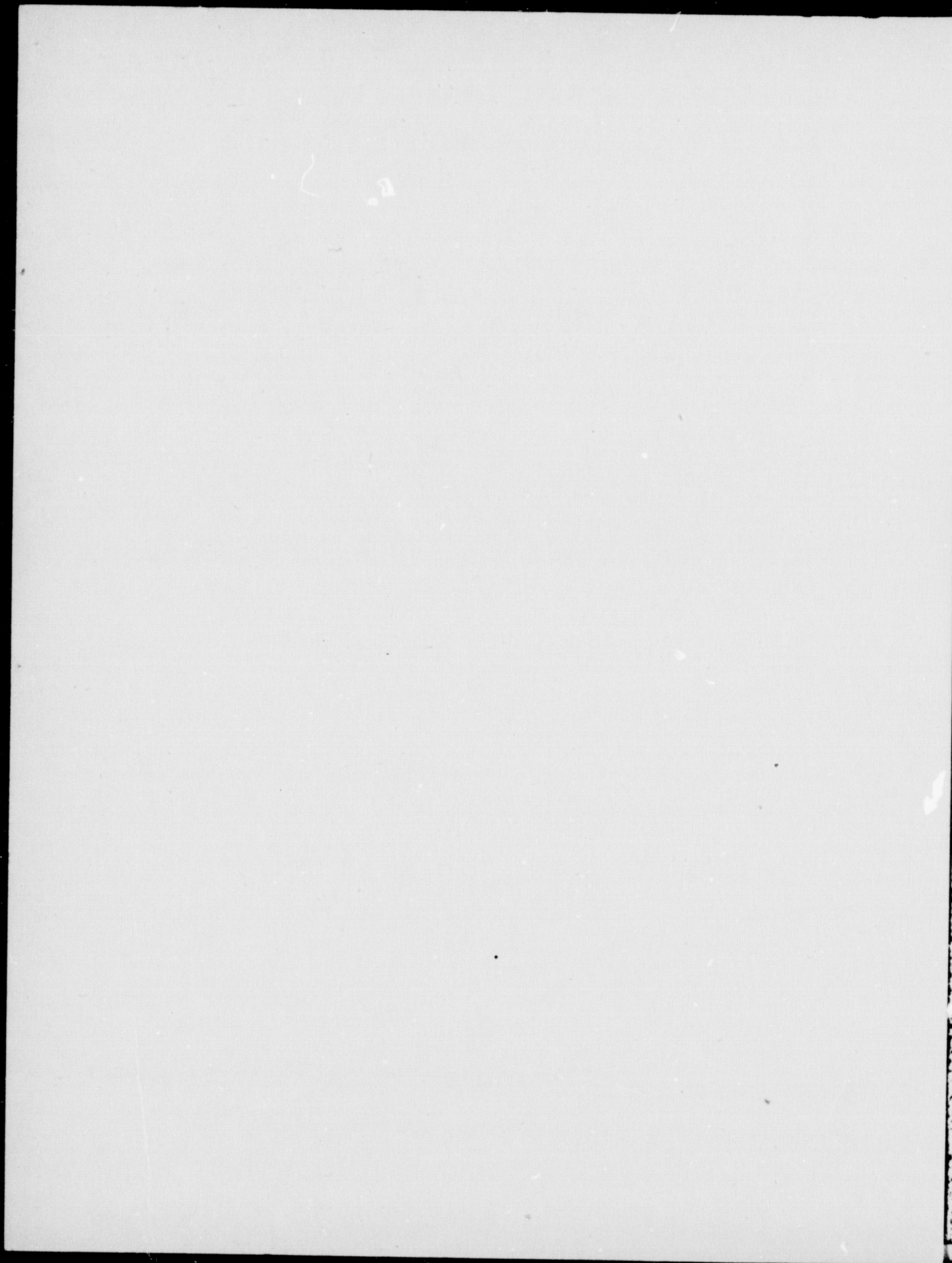
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A-1

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D. C. Form No. 100

CRIMINAL DOCKET

JUDGE WEINFELD

74 CRIM. 538

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

JOVANA GUARDI-Both cts. ✓ 11-8-74

Harry C. Batchelder, AUSA

J.C. EASTERLING- Ct.1 11-8-74

264-6293

For Defendant:

Steven D. Slepian

401 Bway, N.Y. 10013 925-7010

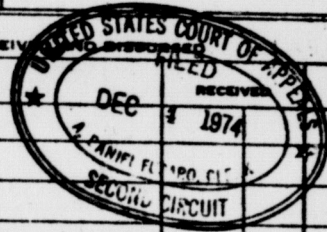
ABSTRACT OF COSTS

AMOUNT

DATE

CASH RECEIVED

NAME



(07)

Fine,

Clerk,

Marshal,

Attorney,

EXHIBIT 21

812,841(a)(1),(b)

Distr. & possess. w/intent to  
distr. Cocaine, II.

(Two Counts)

DATE

PROCEEDINGS

5-24-74 Filed indictment and ordered sealed. B/W ordered. B/W issued. Gurfel.

6-10-74 Indictment ordered unsealed. Bauman, J. Clerk  
D. F. RICHARDT, Clerk

6-24-74 Marked off calendar. Knapp, J.

Deputy Clerk

7-29-74 Deft. Jovana Guradi (atty. present) Pleads not guilty. Motions returned  
in 10 days. Bail fixed by Mag. at \$2,000. P.R.B. secured by \$200. cash.  
Case assigned to Judge Weinfeld for all purposes. Stewart, J.

7-31-74 Filed Notice of appearance of Steven D. Slepian, 401 Bway, N.Y. 925-7010

DATE	PROCEEDINGS	CLERK'S FEE	
		PLAINTIFF	DEFENDANT
7-31-74	Filed Govt. Notice of Readiness for Trial		
Aug-2-74	Jovana Guardi- Filed deft's affidvt. and notice of motion for a bill of particulars.		
Aug-15-74	Jovana GUARDI- Filed deft's affidvt. and notice of motion to dismiss ret. 8-20-74		
Aug-15-74	Jovana GUARDI- Filed deft's memorandum of law in support of motion to dismiss.		
Aug-14-74	BOTH DEFTS.- Case called - Motions and call calender adj. to 8-20-Weinfeld, J.		
Sep.3-74	Filed memo-endorsed on Notice of Motion dtd 8/12/74 -- Motion disposed of as indicated upon argument of motion - Weinfeld, J. (n/n)		
9-3-74	Filed memo-endorsed on Notice of motion dtd 8/15/74 -- ...The motion for dismissal of indictment is denied and case is set for trial on the 24th day of September 1974 at 10AM in Courtroom 1306 at which time deft and her counsel are instructed to be ready and proceed to trial - Weinfeld, J. (n/n)		
9-4-74	Filed Govt's Memorandum of Law in opposition to Deft. Guardi's motion to dismiss		
9-3-74	Filed Govt. Affidavit of Joseph Keefe		
9-10-74	Filed Government's Voir Dire		
9-18-74	Filed Government's requests to charge.		
9-24-74	Both Defts. - Trial October 2/1974 at 2:15 P.M. - Weinfeld, J.		
10-2-74	J.C.EASTERLING - Govt's Motion to sever granted. Trial begun before Weinfeld, J. and a Jury as to Deft. Guardi Only.		
10-3-74	Trial continued and concluded		
10-3-74	Jury verdict - Defendant GUILTY on each of counts 1 and 2 Presentence investigation ordered. Sentence adjourned until 11/8/74 at 10A.M. Rm. 2804. Bail contd. (\$2,000 P.R.B. secured by \$200 cash) - Weinfeld, J.		



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A-3

WEINFELD, J. - U.S.A. GUARDI & EASTERLING

~~74 CR. 533~~

74 CR. 533

110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Enter Order Judgment or
8-74	Filed the following documents received from Mag. Raby -- Docket Entry Sheet; Indictment Warrant; Disposition Sheet; Appearance Bond, sum of \$2,000 FRB w/200 cash to be deposited as security.	
8-74	GUARDI, JOVANA - Filed JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE(1) YEAR on each of counts 1 and 2 concurrently with each other. Pursuant to the provisions of Title 21, Section 841 U.S. Code, the defendant is placed on SPECIAL PAROLE for a term of THREE(3) YEARS to commence upon expiration of confinement. Defendant is continued on present bail and is to post bail pending appeal fixed at \$1,000 cash or surety bond on condition that appeal is prosecuted expeditiously and without delay - WEINFELD, J. (copies issued)	
18-74	JOVANA GUARDI - Filed Notice of Appeal - from judgment dated 11/8/74	
20-74	Filed Memorandum of Law on Representative Admissions.	
5-74	Filed Transcript of record of proceedings, dated 10-22-74	
27-74	J.C. EASTERLING - CLOSED STATISTICALLY AS DEFENDANT IS A FUGITIVE	



INDICTMENT

- - - - - X

SAME TITLE

- - - - - X

THE GRAND JURY CHARGES:

On or about the 23rd day of August, 1973, in the Southern District of New York, JOVANA GUARDI and J.C. EASTERLING, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 31.96 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b) (1) (A); Title 18, United States Code, Section 2).

COUNT II

THE GRAND JURY FURTHER CHARGES:

On or about the 11th day of September, 1973, in the Southern District of New York, JOVANA GUARDI, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 30.06 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b) (1) (A).)

-----  
FOREMAN

-----  
PAUL T. CURRAN, U.S. ATTY.

JUDGMENT AND COMMITMENT

WEINFELD, J.

- - - - - X

UNITED STATES OF AMERICA

v.

JOVANA GUARDI

- - - - - X

On this 8th day of November, 1974, came the attorney for the government and the defendant appeared in person and by Steven D. Slepian, Esq., counsel

IT IS ADJUDGED that the defendant upon her plea of not guilty and a verdict of guilty by a jury has been convicted of the offense of unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a schedule II narcotic drug controlled substance, to wit, cocaine. (Title 21, Sections 812, 841(a)(1) and 841(b)(1)(A) USC.; Title 18, Section 2 U.S. Code.) as charged in two counts and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized

---

JUDGMENT AND COMMITMENT

representative for imprisonment for a period of ONE (1) YEAR on each of counts 1 and 2 to run concurrently with each other.

Pursuant to the provisions of Title 21, Section 841 U.S. Code, the defendant is placed on SPECIAL PAROLE for a term of THREE (3) YEARS, to commence upon expiration of confinement.

Defendant is continued on present bail and is to post bail pending appeal fixed at \$1,000 cash or surety bond on condition that appeal is prosecuted expeditiously and without delay.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/

-----  
U.S. District Judge

s/

-----  
Clerk



1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 ----- -x  
4 UNITED STATES OF AMERICA, :

5 vs. :

6 JOVANA GUARDI and J.C. EASTERLING, 74 Cr. 533

7 Defendants. :  
8 ----- -x

9  
10 B E F O R E :

11 HON. EDWARD WEINFELD,

12 District Judge  
13

14 New York, New York  
15 October 2, 1974 - 2:30 p.m.  
16

17 A P P E A R A N C E S :

18 PAUL J. CURRAN, ESQ.,  
United States Attorney for the  
19 Southern District of New York  
BY: HARRY C. BATCHELDER, JR., ESQ.,  
20 Assistant U.S. Attorney  
21

22 STEVEN D. SLEPION, ESQ.,  
Attorney for Defendant Jovana Guardi  
23  
24  
25

(In open court.)

MR. BATCHELDER: Ready for the government,  
your Honor.

MR. SLEPION: Ready for the defendant,  
your Honor.

May we approach the bench?

THE COURT: Yes.

(At the bench.)

MR. SLEPION: Mr. Batchelder informs me  
that he is not calling the informer in this case and  
it has also been indicated that the informer is in  
federal protective custody, in which case I would ask  
the Court to direct Mr. Batchelder to have the informer  
ready for me to call and to have me supplied with the  
yellow sheets of the informer.

MR. BATCHELDER: I think I can get it, your  
Honor. She is in federal protective custody in the  
D.C. area. This is the first I knew of it right at  
this moment.

I will ask to make a telephone call at the  
recess and I will ask the marshal.

THE COURT: I don't want the trial delayed.

MR. BATCHELDER: No. I am going to do the  
very best I can to get her up here. If he wants to

1 GTpa

3

2 call her as a witness, that is his privilege.

3 THE COURT: Okay.

4 MR. BATCHELDER: The Easterling matter,  
5 as you know, Mr. Easterling is a fugitive, so the  
6 government would move to sever.

7 MR. SLEPION: Very well.

8 THE COURT: J.C. Easterling is a male or  
9 female?

10 MR. BATCHELDER: It is a male.

11 (In open court.)

12 (A jury of twelve and two alternate  
13 jurors were duly selected and sworn.)

14 THE COURT: Members of the jury, this is  
15 a new experience for most of you and while you may have  
16 a general idea of the trial procedure and the  
17 function of a jury, I think it is in order that I  
18 tell you what it really is.

19 I have already mentioned that your basic  
20 function as jurors is to decide the fact issues in the  
21 case. You, the members of the jury, are the sole and  
22 exclusive judges of the facts.

23 Obviously in preparation for this duty which  
24 comes at the end of the trial it will be important  
25 for you as witnesses are called to listen attentively to



1 GTpa

4

2 each witness, and I always add to observe each witness  
3 who testifies before you.

4 I think in questioning one juror I indicated  
5 that you determine the credibility of a witness generally  
6 by his demeanor and how he impresses you, and it is for  
7 that reason that I say that it is not only important to  
8 listen carefully but also to observe the witness.

9 Oftentimes it is not so much what a witness  
10 says as how he says it that will give you a clue as  
11 to whether or not you can accept him as a credible witness.

12 It is important that with respect to the  
13 fact issues that you keep an open mind throughout the  
14 entire trial and form no judgment or conclusion as to  
15 any witness until all the evidence is in the case.  
16 This is important because the case can be presented only  
17 step by step, witness by witness. We know from experience  
18 that oftentimes we will hear a person give us his version  
19 of an incident or an event which may sound very  
20 impressive and very compelling, and yet when we hear  
21 another person give his version of that same event which  
22 seemed to us so very compelling when told by the first  
23 witness or persuasive, may be drawn into doubt or  
24 dissipated entirely.

25 So it is for that reason I emphasize that while

1 GTPa

5

2 you may have impressions about a witness, it is  
3 important not to allow these impressions to become  
4 firmly fixed, because if you do then you are foreclosing  
5 a fair consideration of the testimony of a subsequent  
6 witness who may testify on the same subject.

7 In order to assure that you do keep an open  
8 mind, the Court at this time instructs you that  
9 throughout the progress of the trial you are not to  
10 discuss the case among yourselves, with any person or  
11 allow anybody to talk to you. Whatever impressions you  
12 have you keep to yourselves.

13 Bear in mind what I said a moment ago.  
14 What I really tried to suggest to you is that usually  
15 there are two sides to every story and you will not  
16 have heard both sides until you have heard all the  
17 witnesses testify.

18 The trial proper will start with what are  
19 called opening statements by the lawyers, the lawyer  
20 for the government and the lawyer for the defense. These  
21 opening statements are intended to give you some idea  
22 of what the case is about and it is the sort of framework  
23 or reference so that you can follow the testimony of  
24 witnesses in relationship to the charges contained in the  
25 indictment.



1 I must caution you, however, that  
2  
3 these opening statements made by the lawyers based on  
4 thier preparation for trial in which they will tel  
5 you what they believe the testimony will establiish  
6 are no substitute for evidence. The only evidence  
7 in the case which will guide you in your final fact  
8 determination is the testimony you will hear from a  
9 witness called by one party, the witness will be sworn  
10 to you, then cross examined by the other party and  
11 such documents that come into the case. It is never what  
12 any lawyer says about a fact in the case, neither is  
13 it anything the Court may say about the fact -- it  
14 obviously won't say anything because it doesn't know  
15 anything about the case other than I have a copy of  
16 the indictment. As I say, the opening statements are  
17 helpful to us in the sense that they will give us some  
18 idea of what the case is about, but you will bear in  
19 mind that your decision will always be made on the  
20 basis of evidence in the case, that is the sworn  
21 testimony of witnesses and the exhibits that are  
22 received in the case.

23 After you have heard the opening statements, the  
24 government will go forward with its case and present its  
25 proof. As I said, witnesses called by the government

1 GTPa

7

2 will be sworn before you, first examined by the  
3 Assistant U.S. Attorney and then cross examined by the  
4 opposing side.

5 When the government has presented its case,  
6 the defendant may go forward.

7 At the conclusion of the entire case, the  
8 lawyers will again address you and sum up. They will  
9 review the evidence at that point and urge upon you  
10 the inferences or the results that they believe are  
11 warranted by the evidence in the case. But, again, the  
12 decision, the responsibility for the decision is yours.  
13 You make the determination according to how you view the  
14 evidence in the case and how you pass upon the  
15 credibility of witnesses.

16 After the lawyers have completed their summation  
17 the Court will instruct you as to what the law is, and  
18 depending upon how you find the facts you apply the law  
19 and the logical result of that is the verdict in the  
20 case.

21 That will be the trial procedure from  
22 beginning to end.

23 If the lawyers are ready with their opening  
24 statements, you may make your opening statements now.

25 MR. BANCHELDER: Thank you, your Honor.

Judge Weinfeld, Mrs. Martin, ladies and gentlemen of the jury, Mr. Slepion.

As you know, my name is Harry Bachelder and I am the Assistant who will try this matter for the government.

The indictment in this case charges two crimes, that on August 23, 1973 Jovana Guardi distributed some cocaine, 31.96 grams, and on September 11, 1973 she distributed approximately 39 grams of cocaine for \$800 and in another instance \$850.

Ladies and gentlemen, openings are a bit like road maps. They are supposed to tell you what the evidence is going to be for the simple reason that not all the witnesses can take that stand at one time so the case will come in a bit piecemeal.

The evidence in this case, the government suggests, will be of three types. There will be testimony by the undercover officer who negotiated with the defendant and purchased the drugs, there will be testimony by a surveillance officer and there will be testimony by a chemist with respect to the substance which was purchased, the analysis that he conducted on that.

His Honor has very carefully instructed you



1 and I will simply repeat this instruction that nothing  
2 that I say here is evidence. The only evidence in this  
3 case comes from that chair and that chair alone and  
4 possibly if a stipulation is entered into by counsel that  
5 would come in as well.  
6

7 The government believes that the proof will  
8 show that on August 23, 1973, Detective Ernest Mahone  
9 was working with the New York Joint Task Force, was  
10 introduced to Jovana Guardi in the Tatler's Bar by a  
11 confidential informer by the name of Marion Ladd.  
12 This bar is on East 57th Street. At that time they  
13 discussed the sale of some cocaine. Detective Mahone saw  
14 the defendant speaking with another person, now known  
15 as J.C. Easterling. After some discussions it was agreed  
16 that she would sell some cocaine which could take  
17 approximately a twocut, which means that it could be  
18 cut twice, and at that time Easterling departed,  
19 Miss Guardi departed upstairs to a room upstairs from  
20 the bar.

21 Detective Mahone went upstairs, had a short  
22 discussion with Jovana Guardi, received some cocaine,  
23 went back into the bathroom, paid the defendant for the  
24 cocaine, \$800, and returned.

25 The government has surveillance of this and

some agents will testify as to what they also observed on that day.

On September 11th or just prior to that date Detective Mahone made a telephone call to this defendant at the bar where she was unavailable, and he left a message.

On September 11th he goes back to the Tatler's Bar, met with Jovana Guardi and discussed the sale of another ounce of cocaine. The eventual purchase price agreed on was \$850.

The detective only had \$800. He gave her \$800 with the defendant stating that other \$50 should be given to the confidential informant who initially introduced her to Detective Mahone.

Finally, the chemist will testify as to the analysis that he conducted on the substances and that the substances purchased on both occasions analyzed to be cocaine hydrochloride, having a percentage of cocaine hydrochloride.

Ladies and gentlemen, this is a simple case, but it surely is not an unimportant case. It is a two-incident case. I don't think it will take too long. But it is not unimportant, both to the defendant and both to the government.

1  
2 His Honor has carefully instructed you that  
3 you are to withhold all judgment until the evidence is  
4 totally in so you can see the picture, and the reason  
5 for that is simple, because the salutary effect of  
6 that is it insists both the government and the  
7 defendant get a fair trial and that is really what we are  
8 all here for.

9 The government submits to you that after  
10 you have listened to all the evidence, listened carefully  
11 to the Judge's instructions, that you will be convinced  
12 beyond a reasonable doubt that on those two occasions  
13 Giovana Guardì distributed cocaine.

14 Thank you.

15 THE COURT: Mr. Slepion.

16 MR. SLEPION: Mr. Justice Weinfeld,  
17 Mrs. Martin, ladies and gentlemen of the jury,  
18 Mr. Batchelder.

19 There is basically no obligation upon a  
20 defense counsel to open to a jury and that goes hand  
21 and hand with the philosophy explained to you before  
22 that there is really nothing that the defense must prove  
23 in a criminal trial, that the burden of proof rests  
24 solely on the people, in this case the government.

25 However, as you can see me standing here,



1 Gfpa

2 I am going to open to you and I am going to tell you  
3 what we intend to prove during cross examination and  
4 with Miss Guardi taking the witness stand in her own  
5 behalf and at the end of its case his Honor will  
6 certainly instruct you the various facts of law, one  
7 of which certainly is that there is no obligation upon  
8 Miss Guardi to take this witness stand. She is going  
9 to do so voluntarily and of her own free will.

10 In many criminal cases, whether they be of  
11 a federal level or on a state level, the issues resolve  
12 t themselves as to whether an accused, in this  
13 particular case Miss Guardi, did or did not do a certain  
14 act.

15 In this particular case you are going to  
16 hear Miss Guardi testify that she did the acts in  
17 question in this particular case, but that the reasons  
18 for them are such that at the end of the entire case, if  
19 you believe them, that no criminal responsibility  
20 should be attached to her acts, and we will ask you for  
21 an acquittal.

22 His Honor will charge you at the end of the  
23 case, and it is not my function to do so but just in a  
24 frame of reference of Miss Guardi's testimony, intent  
25 must be established by the government, intent to commit

1       up

2       an act voluntarily, freely, without being coerced,  
3       threatened, forced, pressured in any way whatsoever.  
4       One must have an intent to commit an act in order to  
5       be found guilty of voluntarily and wilfully doing that  
6       act.

7               Miss Guardi did two acts in this case, but  
8       did not do them voluntarily or freely.

9               In the opening Mr. Batchelder indicated to  
10      you that the meeting between the federal officer and  
11      Miss Guardi was arranged by a confidential informer,  
12      and in the opening Mr. Batchelder did not state that  
13      the government was going to call that confidential  
14      informer to indicate what role she, the confidential  
15      informer, Marion Ladd, played in this whole proceeding,  
16      and I suppose I will call her if, in fact, it turns  
17      out during the whole course of this trial that the  
18      government, Mr. Batchelder, does not call her himself, as  
19      she is apparently the moving party in bringing people  
20      together.

21              Also as you sit and listen to all of the  
22      testimony both of the people's witnesses, of Miss Guardi,  
23      of all of the questions and the answers, I would like to  
24      point out now that when Miss Guardi testifies there is  
25      going to be two areas of major concern to all of you



1  
2 by the time this case is over, and I think the Judge's  
3 charge to you will indicate those two areas. They  
4 are two legal areas. One is duress and the other is  
5 entrapment. It will be for you, the judges of the  
6 facts, to decide whether the facts fit the legal  
7 definition of these two concepts, duress and  
8 entrapment, as given to you by Mr. Justice Weinfeld.

9 You will find out that Miss Guardi is 32 years  
10 of age, that she has never, even been convicted of a  
11 crime, that she works as a barmaid.

12 You will also find out that the informer  
13 has a vast record for various criminal activities  
14 dating back to at least 1951 and who, in her own way,  
15 is somewhat of an expert as a con artist and a con  
16 woman and who has done much time in penitentiary  
17 for these activities.

18 You will also find out that her boyfriend  
19 is presently serving time on a narcotics violation and  
20 that her son is under arrest for a crime of extortion.  
21 It will be important to you to weigh her testimony  
22 and the reasons that she has as to why she became a  
23 registered confidential informer with the federal  
24 government and what quid pro quo, what is coming  
25 to her as a result of the activities that she has engaged

1 in since at least February of 1973 and why it came  
2 about that there was a meeting in August, August 23rd,  
3 of 1973 where she had been a registered informant for  
4 over six months already and what she hopes to gain by  
5 having Miss Guardi arrested, indicted, and hopefully by  
6 her way of thinking convicted.  
7

8 Miss Guardi will tell you that originally  
9 she had known this woman Marion Ladd, she had met this  
10 woman, as my client, Miss Guardi, was a barmaid and that  
11 for over a period of a year Marion Ladd, the informer,  
12 indicated that with her various underworld connections  
13 she could help locate various property that was stolen  
14 from my client during a burglary and that she liked  
15 my client very much. She liked her and propositioned  
16 her on numerous occasions sexually and wanted her to  
17 engage in various lesbian activities with her, and I  
18 think you will find out that Marion Ladd has done something  
19 like ten to fifteen years in various women's prisons, --  
20 I'm not quite sure yet, we will find that out all  
21 together when she takes the witness stand, --and wanted  
22 various lesbian activities with my client. My client  
23 consequently refused this.  
24

25 There then came a time where the informer --  
now, you have to understand that the informer started

1  
2 working for the federal government in February of 1973  
3 and up until this time the relationship with my client  
4 was one of seeking her, desiring her in various ways.

5 When all of this was rebuked by my client and  
6 the difficulties between the informer's husband -- not  
7 husband because she is not legally married to him --  
8 boyfriend and her son became apparent, Miss Ladd,  
9 Marion, the informer, told my client that there is no  
10 reason why she shouldn't be able to make some quick  
11 money, instead of working nine and ten hours a night as  
12 a barmaid all you had to do was sell some drugs, she  
13 had it all set up, she had the connections, she was well  
14 known, she could save a lot of time and a lot of  
15 effort, just sell some drugs.

16 My client refused this. At 31 years of age  
17 last year, with never having been convicted of a crime,  
18 she certainly did not intend to get into any activity then  
19 or now.

20 The inducement to make money was not  
21 sufficient. She kept away from all of this.

22 Finally, the informer was really pressed  
23 now, because, you see, there is an obligation between  
24 the informer, who is an agent of the federal government  
25 because she is registered and works for the federal



1 government, now the pressure really became severe  
2 because her boyfriend has been busted, her son has been  
3 busted and she has to produce, so it was no longer a  
4 question of, "Help me, you will make money yourself,  
5 everything will really be fine," no, now it became,  
6 "Jovana," who is the first name of my client, Jovana  
7 Guardi, "Jovana, you are going to have to do this for me  
8 because if you don't I'm going to have somebody throw  
9 some lye in your face, scar you up, maim you and break  
10 your legs if you don't do this, and all I want you to  
11 do is to do it one time. I can't deal the coke to him,  
12 he is a friend of mine, I don't want him to know I have  
13 it, all I want you to do is transfer the envelope to  
14 him and give me the money," which stands to reason  
15 because she is an agent of the federal government.

16 Well, these threats were going on for a  
17 couple of months. Miss Guardi will tell you that  
18 Marion Ladd at one point produced a weapon, showed her  
19 a gun and said, "I mean business." That on another  
20 occasion a man came into the bar where she was working,  
21 threw a glass of whiskey in her face and told her,  
22 "You better do what Marsha --" whose name is Marion,  
23 "-- wants you to do."

24 At this point Miss Guardi is scared out of  
25

her mind and that the only way to get out of this whole thing is to do what Marsha, the informer, wants her to do at least one time, and so after all of these threats, after all of these coercions of physical bodily harm and all of the entrapment that meant on beforehand of the sweet life at the end of the road and how good things will be, my client finally consents to doing it.

You will hear Miss Guardi tell you that Marsha came into the bar the day before the first act, which was August 23rd of 1973, left drugs in the bar, told her, "This is an envelope, it's got cocaine in it. When I come back tomorrow with my friend I want you to give him the envelope and he'll give you \$800 and then I'll pick up the \$800 the next day."

Well, the meeting was arranged, of course, as you know, August 23rd came, the informer, who was an agent of the agent of the federal government, came into the bar, went upstairs, the envelope was there, I believe the agent even opened it up and tasted the contents. The agent will be able to tell you about that. Satisfied himself that it was okay. He went into the bathroom upstairs in the bar, whereupon he gave my client \$800. The agent then left the bar.

My client then left the \$800 in a secret

1 GPa

2 hiding place in the bar where the night receipts were  
3 usually kept as she closed the bar herself when she  
4 worked there.

5 The next day Marsha came and picked up the  
6 money.

7 Now my client thought she was really finished  
8 with it. She was still in one piece, nothing happened,  
9 everything was going to be okay.

10 Marsha called her once more and said, "Okay,  
11 I promise you, this is the last time. You do it once  
12 more and that's going to be the end of it."

13 Again, it was set up that on September 11th  
14 of 1973 that the agent would come into the bar.  
15 Marsha came in the day before, left an envelope  
16 purportedly to contain cocaine, because my client never  
17 saw the substance of what was in this envelope, and  
18 Marsha said to her, "Listen, charge him \$350 this time,  
19 I want \$50 more."

20 Well, the agent was there, my client said,  
21 "It will be \$850." The agent said, "I only have \$300."

22 My client said, "Well, give the other \$50 to  
23 Marion or to Marsha," who, as Mr. Batchelder indicated  
24 before, is the informer. Also the informer said, "If  
25 they want to know how much, if he wants to know how much



1  
2 this will take as a cut, tell him one or two. Tell him  
3 whatever you want."

4 Now, September 11, 1973 has come and it is  
5 gone. Nothing happens. Nothing at all happens in this  
6 case until July of 1974. Ten and a half months later  
7 the informer, true to the go [redacted] lls up my client  
8 on the phone and says, "Are you g [redacted] to be home in the  
9 next 15 minutes or so? I want to see you."

10 My client says, "Well, I'll be going out  
11 shortly."

12 After that phone call the federal agents come  
13 to her door and arrest her for something that [redacted]  
14 got her to do on August 23rd of 1973 and September 11,  
15 1973.

16 By the time all this evidence is in I will come  
17 back to you in what is known as a summation and I will  
18 ask you at that time to find my client not guilty, not  
19 guilty by reason of no [redacted] criminal responsibility, of  
20 not having the intent to commit a sale, a transaction  
21 of drugs but, rather, having the intent not to have her self  
22 maimed, mutilated, and that I hope you will see how this  
23 informer, with all of the things that she had at stake  
24 between her boyfriend and her son, had to produce, had  
25 to produce from February, couldn't produce, had to keep

trying to figure out a way to help her family and by doing so to set up my client who, at 32, was never convicted of a crime, had no predisposition in any way to commit an act of a sale of drugs but was set up through the use of force, fear and coercion to do the act.

I will ask you at the end of this case to find her not guilty of these charges.

Thank you.

THE COURT: Call the first witness.

MR. BATCHELDER: Detective Ernest Mahon.

ERNEST MAHON, called as a witness by the government, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BATCHELDER:

Q May we have your occupation, Detective Mahon?

A Yes, sir. I'm a detective assigned to the New York City Police Department, presently assigned to the New York Joint Task Force.

Q And how long have you been assigned to the New York Joint Task Force?

A For over three years. About three years and five months.



1  
2 Q And could you please tell the Court and  
3 jury what the activities of the New York Joint Task Force  
4 are?

5 A To enforce the federal and state narcotics  
6 laws.

7 Q Calling your attention to August 23, 1973,  
8 at about 8:15 on the evening of that date, were you  
9 on duty on that date?

10 A Yes, sir.

11 Q Would you please tell the Court and jury  
12 what happened?

13 A At approximately 8:15 on August 23, 1973,  
14 I was with Special Agent Gerard Miller and we proceeded  
15 to a location where we met with a confidential informant.  
16 The confidential informant was to take me to Tatler's  
17 Bar and Grill for an introduction to one Jovana Guardi  
18 for the purpose of purchasing an ounce of cocaine.

19 The confidential informant and myself  
20 proceeded to 141 East 57th Street, that is Tatler's  
21 Bar and Grill, and that is the City of New York,  
22 County of New York, State of New York, and I was  
23 introduced by the informant to Jovana Guardi.

24 I had a conversation with Jovana Guardi  
25 relative to me purchasing an ounce of cocaine from her.

1 She asked me did I want street stuff or stuff that could  
2 be cut. I said that I wanted stuff that could be cut.

3  
4 During this conversation I observed an  
5 unidentified black male proceed to the rear of  
6 the bar. Jovana Guardi excused herself from conversation  
7 with me and the informant and she went and had a  
8 conversation with this black male.

9 MR. SLEPION: Your Honor, at this time I  
10 must object in relation to any testimony relative to any  
11 other party of which there may have been, as the  
12 Court indicated a severance before.

13 THE COURT: The objection is overruled.

14 MR. SLEPION: Exception.

15 Q Please continue.

16 A Jovana Guardi, after a brief conversation  
17 with the unidentified black male at the end of the  
18 bar, again came down and talked to me and the  
19 informant. Jovana Guardi informed me that she had an  
20 ounce of cocaine that could be cut that would cost  
21 me \$800. I agreed.

22 At this time I observed the unidentified  
23 male go upstairs in the bar. There were some stairs at  
24 the rear of the bar and he went upstairs.

25 Jovana Guardi and I then discussed the quality

1 of the cocaine. After a short time Jovana Guardi then  
2 went upstairs in the bar, upstairs in the bar in the same  
3 direction as the unidentified black male.  
4

5 After a short time she came to the head of  
6 the stairs and called to me and the confidential  
7 informant to join her upstairs.

8 The confidential informant and myself  
9 proceeded up the stairs and I observed the unidentified  
10 black male seated at a table and Jovana Guardi stood at  
11 his side.

12 Jovana Guardi then introduced me to the  
13 unidentified black male, introducing him as J.C.

14 Q Do you now know the person that was  
15 introduced to you as J.C. Easterling?

16 A Yes, sir.

17 Q Will you please continue.

18 A Jovana Guardi then handed me a blue and  
19 white envelope which I examined and found to contain --  
20 and found in that blue and white envelope a clear plastic  
21 bag containing a white powder. I then attempted to  
22 give Jovana Guardi eight hundred dollars, U.S. currency  
23 that had previously been recorded, serial numbers of which  
24 had previously been recorded, and she refused the money  
25 and she told me to follow her.



1 She then had me follow her into a bathroom.  
2  
3 At the bathroom, in the bathroom, she accepted the  
4 \$800 O.A.F., Official Advance Funds, U.S. currency,  
5 from me and counted them in my presence indicating to  
6 me that it was all there.

7 I then asked Jovana how I could get in touch  
8 with her for when I wanted to make future purchases of  
9 cocaine. She said to me that the cocaine that she  
10 had given me would take a two cut and also when I wanted  
11 to purchase more cocaine just to come to the bar the day  
12 before I wanted to buy so that she would have it for the  
13 following day.

14 I then went back out, got with the S.C.T. and  
15 left the bar.

16 THE COURT: Will you tell us what the S.E.T.  
17 is?

18 THE WITNESS: That is the confidential  
19 informant, sir. I'm sorry.

20 Q I show you what has been marked as  
21 Government's Exhibit 1 for identification and ask if you  
22 recognize this, please?

23 A Yes, I do.

24 Q Will you please tell the Court and jury  
25 what that is?

1                   A       This is a U.S. Department of Justice lock  
2                   seal envelope and on the rear of it it has my initials,  
3                   E.M., and the date, 8/23/73.  
4

5                   Q       What, if anything, did you do with that  
6                   envelope on 8/23/73?

7                   A       I placed the cocaine that I had purchased  
8                   from Jovana Guardi into this envelope.

9                   MR. BATCHELDER: Your Honor, let the record  
10                  reflect that Government's Exhibit 1 is two envelopes,  
11                  one of which appears to be broken.

12                  I am breaking those envelopes and I am  
13                  asking the clerk to mark what has been marked the first  
14                  one as Government's Exhibit 1-A and I am asking the  
15                  clerk to mark the second one as Government's Exhibit 1-B  
16                  for identification.

17                  (Government's Exhibits 1-A and 1-B,  
18                  respectively, were marked for identification.)

19                  MR. BATCHELDER: Your Honor, let the record  
20                  reflect I am now breaking the lock seal in Government's  
21                  Exhibit 1-B for identification.

22                  I would take out what appears to be a clear  
23                  plastic bag with a Manufacturers Hanover Systematic  
24                  Savings envelope in blue and white in it as well as a  
25                  white powder further contained in this plastic envelope

1 and ask the clerk if he would mark that as  
2 Government's Exhibit 1-C for identification.  
3

4 (Government's Exhibit 1-C marked  
5 for identification.)

6 Q I show you what has been marked as  
7 Government's Exhibit 1-C for identification, Detective  
8 Mahone, and ask if you recognize that, please.

9 A Yes, sir, I do.

10 Q And would you please tell the Court and  
11 jury how you recognize it and what it is?

12 A Yes, sir.

13 It is a Manufacturers Hanover Trust  
14 envelope and placed thereon is a Bond's  
15 evidence sticker which contains my initials, E.M.,  
16 and the date, 8/23/73.

17 I can't really see --

18 Q Let us open it up.

19 MR. BATCHELDER: Let the record reflect  
20 I am opening Government's Exhibit 1-C for identification  
21 and taking from the contents the white bag containing  
22 the white powder.

23 Q I ask if you recognize that?

24 A Yes, I do. This is the plastic bag that I  
25 placed this Bond's evidence sticker on it and this, also,



contains my initials, E.M. and the date, 8/23/73.

MR. BATCHELDER: Your Honor, I am now putting the white plastic bag back in and with your clerk's permission I ask that it be stamped, please.

Q I ask you now, Detective, did you put Government's Exhibit 1-C into Government's Exhibit 1-A for identification?

A Yes, sir.

Q And is that the package that you purchased on that date from Jovana Guardi?

A Yes, sir, it is.

Q Detective Mahone, during your time in the Tatler's Bar, did you recognize any other persons in that bar?

A Yes, sir, I did.

Q Would you please tell the Court and jury who it was?

A Yes. It was a brother police officer, Detective William Murphy, who was sitting at the bar.

Q Calling your attention to September 10, 1974, did you have occasion to make a telephone call on that day?

A Yes, I did.

Q Will you please tell the Court and jury what

transpired?

A Yes. On September 10, 1973, I placed an undercover telephone call to the Tatler's Bar. The phone was answered by an unidentified male, and I asked to speak to Jovana. The unidentified male voice indicated to me that Jovana was not there, but that he would take a message.

I then asked the unidentified male -- I then said to the unidentified male via the phone to please inform Jovana that Ernie had called and that I would be coming to the bar the next day at approximately 7:00, and the unidentified male said that he would see that he got the message to Jovana, and I reiterated that he should please try to get the message to her because it was important, and he said he would try to get the message to her.

Q Calling your attention to September 11th, the following day, at about 7:15 in the evening of that date, were you on duty then?

A Yes, sir, I was.

Q Please tell the Court and jury what transpired then.

A At about 7:15 P.M. on September 11th, I proceeded to the Tatler's Bar, 141 East 57th Street,

1 that is New York City, New York, and I was met by the  
2 defendant Jovana Guardi.  
3

4 Jovana had me accompany her to a table  
5 situated in the rear of the bar. Jovana Guardi told me  
6 that she had an ounce of cocaine for me, but this ounce  
7 of cocaine would be more than the first ounce that I  
8 had bought. This ounce would be \$350 instead of the \$800.

9 I informed Jovana Guardi that I only had  
10 \$200. She said to me, well, she would take the  
11 \$800, but to make sure that I gave the \$50 to the cooperat  
12 individual to give to her.

13 Jovana Guardi then reached into her bosom  
14 and removed from her bosom a plastic bag containing  
15 a white powder and she gave it to me. I then gave  
16 Jovana Guardi \$800, U.S. currency, the serial numbers  
17 of which had previously been recorded.

18 Jovana Guardi then asked me what was I  
19 going to use to cut the cocaine, and I replied  
20 lactose. Jovana Guardi then said to me that the cocaine  
21 would take a one cut.

22 I then again asked Jovana Guardi how I could  
23 get in touch with her, you know, and she said to me  
24 that she was going to be leaving the bar, that she  
25 was no longer working at the bar and she would probably



be going to Las Vegas and if I wanted to contact her in the future I would have to contact her through the cooperating individual.

I then got up and left the bar.

Q I show you what has previously been marked as Government's Exhibit 2 for identification, which are two lock seal envelopes attached together, one of which appears to be broken at the top, and ask if you recognize that, please?

A Yes, sir, I do.

Q Would you please tell the Court and jury what it is?

A It is my signature and the date, 9/11/70 appearing on the back of the envelope.

MR. BATCHELDER: I am now breaking the two envelopes and I am asking the clerk to please mark the second envelope as Government's Exhibit 2-B for identification and the first envelope as Government's Exhibit 2-A for identification.

(Government's Exhibits 2-A and 2-B, respectively, were marked for identification.)

MR. BATCHELDER: Your Honor, at this time I am opening Government's Exhibit 2-B for identification and I am removing therefrom a clear plastic bag

1 containing white powder, containing Bend's evidence  
2 stickers on it, and I ask that the clerk please mark this  
3 as Government's 2-C for identification.  
4

5 (Government's Exhibit 2-C marked for  
6 identification.)

7 Q Detective Mahone, I now show you what has  
8 been marked as Government's Exhibit 2-C for  
9 identification, and ask if you can recognize that,  
10 please?

11 A Yes, sir, I do.

12 Q Would you please tell the Court and jury  
13 what it is?

14 A This is the plastic bag containing the  
15 white powder that I received from Jovana Guardi on  
16 September 11th, and it has my initials and the date on  
17 it.

18 Q Did you subsequently put this into  
19 Government's Exhibit 2-A for identification?

20 A Yes, sir, I did.

21 Q And was that at your office?

22 A Yes, sir.

23 Q One further question, Detective Mahone.

24 Before coming here and testifying, did you  
25 review at my request your reports of these incidents?

1  
2 A Yes, sir, I did.

3 Q And have you also discussed with me the  
4 testimony you would be giving here today?

5 A Yes, sir, I did.

6 MR. BATCHELDER: Thank you, your Honor.

7 The government has no further questions  
8 of this witness.

9 THE COURT: You may inquire.

10 CROSS EXAMINATION

11 BY MR. SLEPION:

12 Q Detective Mahone, this cooperating  
13 individual that you refer to, you are talking about  
14 the informer, aren't you?

15 A Yes, sir.

16 Q And what is that informer's name?

17 A She is known to me only as Marsha.

18 Q Is she a registered informer?

19 A Yes, sir, I believe so.

20 Q Do you know what her number is?

21 A No, sir.

22 If I can refer to my report --

23 Q Sure.

24 A -- I can give you a number.

25 Q Sure.



MR. BATCHELDER: You can give it to him.

MR. SLEPION: Sure.

A The confidential informant's number was  
S.C.T. 20093.

Q Do you know how it came about that Marsha  
got this number?

A Well, to the best of my knowledge, she was  
registered by the agents and/or officers who were utilizing  
her and every informant that is utilized by the Drug  
Enforcement Task Force is given a number.

Q Do you know when Marsha got her number?

A No, sir, I don't.

Q When for the first time did you meet  
Marsha?

A On August 23, 1973.

Q You had no occasion to work with Marsha  
prior to August 23, 1973?

A No, sir.

Q And you do not know how long Marsha was  
working at that particular time?

A No, sir.

Q Do you know who Joseph Keefe is?

A Yes, sir.

Q Who is he?

1 A He is a special agent.

2 Q Did you have any conversations with him  
3 relative to Marsha or relative to the case involving  
4 Jovana Guardi?  
5

6 A I don't follow. I don't understand what you  
7 mean.

8 Q Did you ever have any conversation with this  
9 Special Agent Joseph Keefe in relation to Miss Guardi  
10 or in relation to the informer, Marsha?

11 A The only conversation that I had with Special  
12 Agent Keefe prior to meeting Marsha was that she was a  
13 female and that she was an informant, confidential  
14 informant.

15 Q How did it get to be that you met  
16 Marsha, when is this, how did this come about?

17 A On August 23rd, in the company of Special  
18 Agent Gerard Miller, I was introduced to the cooperating  
19 individual at a pre-arranged location and this introduction  
20 was for the purpose of her taking me to meet Jovana Guardi.

21 Q So that when you met with Marsha, she told  
22 you to go to the bar and that she was going to introduce  
23 you to Jovana Guardi, is that right?

24 A Yes, sir.

25 Q That is on August 23, 1973, is that right?

1 A Yes, sir.

2 Q Going to the second transfer, which was on  
3 September 11, 1973, you indicated that Miss Guardi  
4 told you to give the balance of the \$50 to the  
5 informer, is that right?  
6

7 A She did not say informer, she said to me to  
8 give the \$50 to Marsha.

9 Q Well, naturally, to Marsha.

10 Do you recall any further conversation with  
11 my client relative to your status as a possible police  
12 officer?

13 A No, sir.

14 Q Do you recall my client saying she hopes you  
15 weren't a police officer because she doesn't want to  
16 get into any trouble?

17 A No, sir.

18 Q Did you make any independent notes of that  
19 transaction?

20 A I made a rough draft of the copy of my D.E.A. 6  
21 which was given to the secretary to be typed.

22 Q Do you have any other notes, any private notes  
23 that you keep relative to your case?

24 A Private notes?

25 Q Yes.



1  
2 A No, sir.

3 Q After September 11th, did you have any  
4 occasions to see or to talk with the informer?

5 A Yes, sir.

6 Q For how long a period of time up until  
7 July 16th have you had contact with the informer?

8 A Well, I haven't had contact with the  
9 informant. I have worked in an undercover capacity,  
10 if I may say, and the only time I've seen the  
11 informant was when people wanted to utilize my services  
12 to go out with the informant and work in an undercover  
13 capacity with her, which I think was maybe two or three  
14 occasions after Miss Guardi.

15 MR. SLEPION: I have no further questions.

16 THE COURT: Any redirect?

17 MR. BATCHELDER: Just two questions, your  
18 Honor.

19 REDIRECT EXAMINATION

20 BY MR. BATCHELDER:

21 Q Were those two or three occasions to  
22 purchase drugs from other people?

23 A Yes, sir.

24 Q And that was people the informant knew?

25 A Yes, sir.

GTpa

Mahone-redirect  
Murphy-direct

38

Q Do you know why an informant is given a number?

A The informant is given a number so that her name is not used, so that the real name is not known and used.

Q So would it be fair to say to preserve her confidentiality?

A Yes, sir.

MR. BATCHELDER: Thank you.

The government has no further questions.

THE COURT: You are excused.

(Witness excused.)

MR. BATCHELDER: The government would call as its next witness William F. Murphy.

W I L L I A M M U R P H Y , called as  
a witness by the government, having first  
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BATCHELDER:

Q Could I please have your occupation, Detective Murphy?

A Yes. I'm a detective with the New York City Police Department.

Q And could you please tell me for how long

1  
2 you have been a detective?

3 A Approximately 17 years.

4 Q And in calling your attention to August of  
5 1973, what were your duties on that occasion?

6 A I was an investigator with the New York  
7 Joint Task Force.

8 Q Calling your attention to the evening of  
9 August 23, 1973, were you on duty on that date?

10 A Yes, sir, I was.

11 Q Would you please tell the Court and jury  
12 what transpired?

13 A Well, on that date, at about 8:15 P.M.,  
14 I was a member of a surveillance team. My job was  
15 to enter the Tatler Bar at 141 East 57th Street and  
16 make notes and observations of what transpired in the  
17 bar.

18 Q What did you observe, if anything?  
19 What happened?

20 A Well, when I first got to the bar and I  
21 remained in the bar maybe a half hour, a little longer,  
22 when I first got there I was the only patron at the bar.  
23 There was a young lady behind the bar and a waiter that  
24 was moving about the back.

25 Oh, after being in the bar maybe five minutes



1 a black male, maybe 55 years old, entered and  
2 engaged the barmaid in conversation. I saw them at  
3 the end of the bar. I saw the barmaid remove her handbag  
4 from the vicinity of the cash register, I saw her take  
5 out a brown manilla envelope and hand it to this  
6 man, who then went and made a phone call and walked  
7 upstairs. I heard the barmaid call to him by the  
8 name J.C. He went upstairs and I didn't see him after  
9 that.  
10

11 Q Did you see anyone else in the bar on that  
12 evening after you initially arrived?

13 A Yes. After I arrived, sat at the bar and  
14 had a couple of drinks, I saw Detective Mahone enter  
15 with a female companion, he sat at the bar about  
16 midway, ordered drinks for himself and his companion and  
17 engaged the barmaid in conversation.

18 Q Do you see the barmaid in this courtroom  
19 today?

20 A Yes, I do.

21 Q Would you please point her out?

22 A The young lady sitting at the witness  
23 table.

24 MR. BATCHELDER: Let the record reflect  
25 Detective Murphy has correctly identified Joann Gaurli.

1 GTPa

Murphy-direct

Keefe-direct

2 Q What happened after she went upstairs, is  
3 anything? What did you observe?

4 A Well, she went upstairs and called -- came  
5 down and motioned to Detective Mahone and his  
6 companion to come upstairs. They left my view and they  
7 were gone for maybe several minutes. They returned to  
8 the bar. Detective Mahone sat at the bar again with his  
9 companion, had a drink and left.

10 Q What did you do then?

11 A I stayed in the bar for a few more minutes,  
12 maybe three or four minutes after they left, and then  
13 I left, too.

14 MR. BATCHELDER: The government has no  
15 further questions of this witness, your Honor.

16 MR. SLEPION: No questions.

17 (Witness excused.)

18 MR. BATCHELDER: The government would  
19 next call as its next witness Joseph Keefe.

20 J O S E P H K E E F E , called as a  
21 witness by the government, having first  
22 been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BATCHELDER:

25 Q Will you please tell the Court and jury your

present occupation?

A Special Agent for the U.S. Justice Department,  
Drug Enforcement Administration.

Q And how long have you been a Special Agent?

A Approximately four years.

Q Calling your attention to the evening of  
August 23, 1973, were you on duty on that date?

A Yes, I was.

Q Will you please tell the Court and jury  
what happened?

A I was in the area of 141 East 57th Street.  
At approximately 8:25 P.M. on that  
evening I observed Detective Mahone and a cooperating  
individual enter the Tatler's Bar, which is located at  
141 East 57th Street.

Subsequently about 8:50 P.M. that evening  
I observed the same Detective Mahone and the  
cooperating individual exit Tatler's Bar, enter an  
official government vehicle and exit the area of  
57th Street.

Q What happened then, please?

A Subsequently, I met with Detective Mahoney.  
He advised us what had transpired in the Tatler's Bar  
and subsequently returned to the New York Drug Enforcement



Task Force Office.

Q What did you do there, if anything, please?

A At that time myself and Detective Mahoney initialed, sealed and weighed the evidence that he had purchased at the Tatler's Bar that evening and placed it in the Task Force safe for safekeeping.

Q I show you what has been marked as Government's Exhibit 1-A and 1-C for identification and ask if you can recognize these, please.

A I recognize 1-A by my initials, which are on the back, and I recognize 1-C, also, by my initials which are on the tape.

Q Will you please tell the Court and the jury what you did with 1-C? Did you lock 1-C into 1-A?

A That's correct.

Q And what did you do with it then?

A I then placed it on that evening of the 23rd in the Task Force safe and then subsequently the following morning I retrieved it from the safe and hand-carried it to our regional laboratory at 90 Church Street.

Q Calling your attention to September 11, 1973, were you on duty on the evening of that date, also?

A Yes, I was.

1  
2 Q Will you please tell the Court and jury  
3 what you observed, if anything?

4 A I was, again, at the area of 141 East 57th  
5 Street, where I observed that evening Detective Mahone  
6 enter the Tatler's Bar at that same address and  
7 approximately ten minutes later I observed him exit  
8 the same bar, enter an official government vehicle and  
9 exit the area, where I met with Detective Mahone.

10 Q I show you what has been marked as  
11 Government's Exhibit 2-C and 2-A for identification,  
12 and ask if you can recognize these, please.

13 A Yes, I recognize 2-A also from my initials,  
14 which are on the back cover of the envelope, and I  
15 recognize 2-C, again, from my initials, which are on this  
16 tape on this package.

17 Q What, if anything, did you do with  
18 2-A and 2-C?

19 A I placed 2-C into 2-A on the evening of  
20 September 11th and then I placed the evidence  
21 envelope in the Task Force safe again for safekeeping.

22 Q What, if anything, did you do with that the  
23 next day?

24 A On September 12th I took the evidence to our  
25 regional laboratory at 90 Church Street.

Q Prior to testifying here today, have you reviewed your surveillance reports with me?

A Yes, I have.

Q And have you discussed this case with me?

A Yes, I have.

MR. BATCHELDER: The government has no further questions of this witness, your Honor.

MR. SLEPION: Do you have the Grand Jury testimony of this witness?

MR. BATCHELDER: No.

MR. SLEPION: So he never testified before the Grand Jury?

MR. BATCHELDER: That's right..

#### CROSS EXAMINATION

BY MR. SLEPION:

Q Your first name is Joseph, is that right?

A Yes.

Q Joseph Keefe?

A Yes.

Q Mr. Keefe, how long do you know the informer, Marion Ladd, Marsha, the informer, whatever you want to call her?

A Since approximately February of 1972, thereabouts.



1                   Q     How did you meet the informer in February of  
2  
3     1973?

4                   A     I met her at the Task Force Office on  
5     Varick Street. I believe that was the first time I met  
6     her.

7                   Q     And you had a conversation with her at that  
8     time?

9                   A     Yes.

10                  Q     Will you tell the ladies and gentlemen of the  
11     jury the sum and substance of that conversation?

12                  A     It regarded knowledge that she had of  
13     various narcotic traffickers in the New York area.

14                  Q     Did you ever question her as to why she was  
15     becoming an informer --

16                         MR. BATCHELDER: Objection. Irrelevant,  
17     your Honor. It calls for speculation on behalf of the  
18     witness.

19                         THE COURT: I will allow him to answer.

20                         You may answer.

21                  A     When I first met her she was already an  
22     informant for the Task Force.

23                  Q     Yes.

24                  A     So I don't -- you know, I never really discussed  
25     with her what her motives were. She was already a

1 registered informant.

2  
3 Q You never had any conversation with her  
4 relative to problems of her boyfriend and her son with  
5 law enforcement?

6 A I never had per se with her, no.

7 MR. SLEPION: Would you read back the  
8 witness' answer for me, please.

9 (Record read.)

10 Q Does that indicate that you have had  
11 conversations with other people relative to the law  
12 enforcement difficulties of the informer's son and the  
13 informer's boyfriend?

14 A Her boyfriend? I'm not familiar with the  
15 informant's boyfriend. I'm not clear on what --

16 Q Excuse me for interrupting.

17 A -- who that would be.

18 Q Mr. Frank Stewart, is that name familiar  
19 to you?

20 A Yes.

21 Q Is that the informer's boyfriend, Frank  
22 Stewart?

23 A I believe so. I'm not familiar with her  
24 personal life and who her boyfriend is.

25 Q You heard the name Frank Stewart before, is

that right?

A That's correct.

Q Do you know a Frank Stewart, in fact, is in jail on narcotics charges?

A That's correct.

Q Do you know how much time he is doing?

A On the charge he is in jail for now?

Q Sure.

A From the New Jersey case?

Q Sure.

A I believe it was seven to -- seven years.

Q Seven to what?

A Seven to ten years.

Q Do you know of any other cases that Mr. Frank Stewart is being wanted for right now?

A I don't know of anything he is wanted for.

Q Do you know of any other cases that he is presently waiting sentence on besides the New Jersey case for which he got seven to ten years?

A I don't know he has been found guilty in any other case.

Q Have you ever had any conversation with Marsha relative to how best a seven to ten year sentence can be reduced in the federal courts?



1           A     That's unclear what you are asking.

2           Q     Have you ever had any conversation with  
3           Marsha as to how one can cause a seven to ten year  
4           sentence imposed on somebody get lessened to something  
5           lower than seven to ten years?  
6

7           A     Yes.

8           Q     Did Marsha ever tell you how many people she  
9           has to set up to try to get this sentence lessened?

10          A     Whose sentence, hers?

11          Q     Is she in jail, too, on a sentence?

12          A     No. That's why I'm asking.

13          Q     Well, Mr. Stewart, her boyfriend, that is  
14          doing seven to ten years.

15          A     That she is doing something to help him, is  
16          that what you are asking me?

17          Q     So far, I asked you previously whether you  
18          had a conversation with Marsha as to how an individual  
19          can have a seven to ten year sentence lessened, you  
20          indicated yes, you had a conversation with her about  
21          that. Is that so?

22                 Right, but I'm not -- I didn't necessarily --  
23          you just said in general.

24                 THE COURT: You didn't ask him what the  
25          conversation was.

Q Yes, yes, in general.

Did Marsha ever tell you in general how many people she had to set up to get her boyfriend's sentence commuted?

A No, she never told me how many people she had to set up to get her boyfriend's sentence commuted.

Q You met Marsha in February of 1973, is that right?

A That's correct.

Q Until August of 1973, had you been in contact with Marsha?

A Yes, I had.

Q When did Marsha or, rather, did Marsha tell you she was going to set up Jovana Guardi?

A Yes, she told me about Miss Guardi, yes.

Q When did she tell you she was going to set up Jovana Guardi?

MR. BATCHELDER: Objection to the word set up, your Honor.

THE COURT: If you'd raised an objection before I would have sustained it.

Sustained as to form.

MR. BATCHELDER: Your Honor, he tried it once.

THE COURT: Sustained as to form.

Q When for the first time, officer, did you hear of the name Jovana Guardi?

A In August of 1973.

Q Was that during a conversation with Marsha?

A That's correct.

Q Did Marsha tell you at that time that she was going to get Jovana Guardi to sell drugs?

A She told me that Jovana Guardi did sell drugs, yes, sir.

Q Did you introduce Jovana Guardi to Detective Mahone?

A Did I?

Q Yes.

A No, I did not.

Q Do you know how it came about that Marsha got in contact with Detective Mahone?

A You said Jovana Guardi met --

Q Marsha.

A Marsha and Detective Mahone?

Q Yes.

A Oh, yes, I was there, yes.

Q Were you there when they met initially?

A Right.



Q And when was that?

A I believe that was August 23rd.

Q Did you ever have a conversation with Marsha relative to her son being arrested on an extortion charge?

A Not that I can recall, no.

Q Do you know whether or not it is true that Marsha's son is arrested on an extortion charge?

MR. BATCHELDER: Objection as to the form.

THE COURT: The objection is sustained.

Q You indicated before that you heard of the name Frank Stewart, is that correct?

A Yes.

Q Do you know Marsha's son's name?

A I know his first name, yes.

Q What is that?

A Bruce.

Q Do you know of Bruce's difficulties with the law in relation to the charge of extortion?

A Not that I can recall, no.

Q You do not know whether or not he is presently facing an extortion charge, is that right?

A I do not know.

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Keefe-cross/redirect

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2 MR. BATCHELDER: Objection, your Honor.

3 He has already asked and answered it.

4 MR. SLEPION: All right, your Honor, I will  
5 move along.

6 Q Have you had conversations with Marsha since  
7 September 11th of 1973?

8 A Yes, I have.

9 Q And after September 11th of 1973, did you  
10 have occasion to continue to work with Marsha?

11 A Yes.

12 Q On about how many occasions after  
13 September 11, 1973 had you worked with Marsha?

14 A In actual undercover purchases or --

15 Q Yes.

16 Q I would say approximately 30 or better  
17 times.

18 MR. SLEPION: No further questions.

19 REDIRECT EXAMINATION

20 BY MR. BATCHELDER:

21 Q Do you know of your own knowledge whether  
22 Frank Stewart was indicted in this Court and is to  
23 stand trial, that he was indicted sometime in July  
24 of this year and is to stand trial, is that correct?

25 A Yes.

Q And he is scheduled to stand trial before Judge Lasker, I believe, is he not, next week or the week after?

A I believe so, yes.

MR. BATCHELDER: Thank you. I have no further questions.

MR. SLEPION: I have some more questions now as a result of this, Judge.

RE CROSS EXAMINATION

BY MR. SLEPION:

Q You are saying that you now know that Frank Stewart is presently awaiting trial on a case in this jurisdiction here in New York County?

A Yes.

Q Do you recall me asking you if you knew of any other difficulties of Mr. Stewart?

MR. BATCHELDER: Objection.

A You asked me about any other sentencing. He hasn't been found guilty yet.

Q I see. I see.

What is he being charged with here in New York County now besides the seven to ten year sentence --

THE COURT: He didn't say New York County.



he said in the U.S. District Court. This courthouse, before Judge Lasker.

Q What is the charge?

A Sale of narcotics.

Q One sale of narcotics?

A I believe he is being charged with two sales.

Q And that case is due to start when?

A I believe a week or two.

MR. SLEPION: No further questions.

REDIRECT EXAMINATION

BY MR. BATCHELDER:

Q Who is the informant on that case?

A The same informant on this case.

MR. BATCHELDER: No further questions.

THE COURT: I think we will take our adjournment for today.

Before we go, Miss Bailey, I notice you have taken notes while the witness has testified. There always has been a question about jurors taking notes because sometimes some Judges think they are inclined to take notes on matters that seemingly are important to them and no doubt they are, but a case has to be decided upon the totality of all the evidence and all the

evidence in the case is important.

I have no objection to your taking notes, but I can't permit you to take them home. Also I am telling you now that they will not be permitted to go into the jury room and I will explain why that is.

There have been experiences where problems come up in the course of jury deliberations and one juror's recollection will be so and so and another juror will say so and so and another juror came out and said, "Well, I took notes and I am positive it is so and so."

If there is any question as to the testimony, the trial minutes are always available.

And also, as I say, I have no objection if you would rather take notes, you will have to leave them here, but I mentioned before that I thought it was very important to observe the witnesses as much as to listen to them and sometimes it is a little distracting when you take notes.

If you want to do so you will have to leave them. They will be sealed, nobody will look at them. The clerk will seal them and the clerk will return them to you tomorrow morning. I hope you will

understand that.

We resume tomorrow morning at 10:00.

I will ask you to please be in the jury room, which is in the rear of the courtroom, so we can start promptly at 10:00.

With that I will say good night to you all.

I want to see the lawyers for a moment, please.

(Jury left the courtroom.)

THE COURT: Mr. Slepion, I would like to have your requests to charge. This case is moving along quickly.

MR. SLEPION: I will try to be able to do that, Judge.

THE COURT: You don't.

MR. SLEPION: The only charges I am going to ask is entrapment and duress.

MR. BATCHELDER: Your Honor, on the basis of the evidence --

THE COURT: I don't know what the evidence is.

MR. SLEPION: After she testifies then I would be requesting duress and entrapment and the rest of the things.



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2 Tomorrow I can't go forward -- I can  
3 go forward with my client, but I can't close my  
4 case until Marsha is made available.

5 MR. BATCHELDER: I am running that down  
6 right now.

7 MR. SLEPION: And Marsha's yellow sheet,  
8 which is very extensive, which I would like to have.

9 (Court adjourned to October 2, 1974  
10 at 10:00 a.m.)

11 \*

\*

\*

2 vs.

3 JOVANA GUARDI and  
4 J.C. EASTERLING

October 3, 1974.

10:00 a.m.

6 (Trial resumes.)

7 (In open court, jury present.)

8 THE COURT: Mr. Slepion, where is your  
9 defendant?

10 MR. SLEPION: I called my client, your  
11 Honor, this morning and I assume probably she may be  
12 a few moments detained because of traffic. I don't  
13 know. I would like to go outside and see if she is  
14 waiting.

15 THE COURT: All right, go ahead.

16 (Pause.)

17 MR. SLEPION: I apologize at this time. My  
18 client is not outside at the moment. She should be  
19 here.

20 THE COURT: All right, we'll wait.

21 MR. SLEPION: May we approach the bench,  
22 your Honor?

23 THE COURT: Yes.

24 (Discussion off the record at the bench.)  
25

(In open court.)

THE COURT: Members of the jury, apparently the defendant has been detained. I don't see any point in keeping you in the jury room. Why don't you go back inside and wait.

(Jury left the courtroom.)

THE CLERK: We will stand in recess.

(Recess.)

\* \* \*

(In open court, jury not present.)

MR. BATCHELDER: Your Honor, at this time Mr. Slepion and I have looked over the yellow sheet and we have ticked off what we believe to be the conviction record and I would like to show it to you.

The last conviction record, your Honor, was in 1956.

MR. SLEPION: This yellow sheet is also incomplete in that there are a number of arrests certainly after 1956 that are not recorded in the disposition portion of the yellow sheet and so I really do not have a full and complete record of this witness.

THE COURT: You say certainly since then. How do I know that?



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2 MR. SLEPION: Because it is open. I am not  
3 incorrect in the sense that it is not complete. There  
4 are a number of arrests in other jurisdictions as well.

5 THE COURT: You know you can't ask about  
6 arrests.

7 MR. SLEPION: But I would be able to ask  
8 whether some of those arrests --

9 THE COURT: No, you are not going to ask if  
10 any arrests were convictions.

11 MR. SLEPION: I am not saying that.

12 THE COURT: I want to get something else  
13 clear.

14 Have you talked to this informant?

15 MR. SLEPION: No.

16 THE COURT: Do you know what her testimony  
17 is she is going to give?

18 MR. SLEPION: I have received copies of the  
19 testimony.

20 THE COURT: In other words, if the purpose  
21 is to put her on the stand solely to get this  
22 information before a jury without any substantive  
23 evidence in support of the statements you made to the  
24 jury, I am not going to allow her to testify.

25 MR. SLEPION: I have done an investigation

on my own with my client prior to this --

THE COURT: No. I will give you an opportunity to talk to this witness, but you are not going to put her on the stand just to get this record in front of the jury, are you?

MR. SLEPION: No. I am talking about motivation as to what she has done for setting up and bringing my client in connection with the federal government --

THE COURT: I say, is she going to concede this or admit it? Do you know?

MR. SLEPION: Is she going to concede that she set my client up?

THE COURT: Yes.

MR. SLEPION: I am sure she is going to concede that she introduced my client to Detective Mahone.

THE COURT: When you say set up, that is one thing.

MR. SLEPION: Introduced.

THE COURT: Introduced is something else again.

MR. SLEPION: I am sure, your Honor, that she will concede that she introduced Detective Mahone to --

1  
2 THE COURT: There is no dispute of that. But  
3 you made a statement to that jury yesterday that  
4 certain acts were threatened against your client.

5 MR. SLEPION: That's correct.

6 THE COURT: Are you calling her for that  
7 purpose?

8 MR. SLEPION: I am going to call her -- my  
9 client, first of all, will testify to that and I am  
10 hoping that the witness will agree that there were threats  
11 made.

12 THE COURT: Have you talked to the witness?

13 MR. SLEPION: No, I haven't talked to the  
14 informant.

15 THE COURT: I am going to give you a full  
16 opportunity to talk to her out of the hearing of  
17 the jury.

18 MR. SLEPION: And if she denies, your Honor,  
19 I want the denial to be on the record and for my  
20 client to state what she said --

21 THE COURT: Then I am not going to allow you  
22 to impeach your own witness and that is exactly the  
23 point of it.

24 MR. SLEPION: No, the point of it is, your  
25 Honor, that this witness testified before the Grand Jury



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2 to begin with. Mr. Batchelder, for his criminal  
3 tactics at this particular time, has deemed the informant  
4 unnecessary in that he has a federal agent to testify to  
5 a sale. In no sense in the true word is this my  
6 witness, this is obviously a hostile witness who is  
7 under protective custody.

8 THE COURT: You know from her statement  
9 that she is not going to support the testimony of your  
10 client.

11 MR. SLEPION: I don't know that.

12 THE COURT: I am saying I am giving you the  
13 opportunity to talk to her out of the hearing of  
14 any government agent or representative.

15 MR. SLEPION: And, your Honor, may I say --

16 THE COURT: Otherwise, if you call her as a  
17 witness after talking to her, you are vouching for her  
18 and these convictions go back to 1936 --

19 MR. SLEPION: But there are more, Judge,  
20 that the U.S. Attorney does not have a completed record  
21 for.

22 THE COURT: Let us not talk at cross  
23 purposes.

24 You made many statements in your opening  
25

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2 to the jury.

3 MR. SLEPION: That's right.

4 THE COURT: Of course, your client is free  
5 to testify to that.

6 MR. SLEPION: That is what she is going to  
7 do.

8 THE COURT: I am asking you, for what  
9 purpose are you calling this witness?

10 MR. SLEPION: I am calling this witness,  
11 your Honor, for, basically, two purposes.

12 One of them is to show the motivation that  
13 this witness has in terms of the difficulties that  
14 her boyfriend is presently facing and has faced and  
15 that her son is facing and the pressures exerted upon  
16 her by these relationships --

17 THE COURT: How are you going to prove that?

18 MR. SLEPION: First of all, we already have  
19 Police Officer Keefe who has already indicated that  
20 Frank Stewart, who is her boyfriend, is already doing  
21 seven to ten years and is presently on trial next week.

22 THE COURT: How does that prove there was  
23 any motivation? All you have proved is the conviction.

24 MR. SLEPION: Now I will be having this witness  
25 on the stand indicating her relationship to Frank Stewart

1 and why she has attempted for various months to get  
2 my client to engage in a criminal activity.

3 THE COURT: That is what I am asking you.  
4 Have you talked to her about that which you refer to as  
5 the motivation?  
6

7 MR. SLEPION: No . I have talked to my  
8 client about it. The motivation, your Honor --

9 THE COURT: Your client won't know the  
10 motivation.

11 MR. SLEPION: Through our investigation  
12 we have learned that Frank Stewart is in jail.

13 THE COURT: I am telling you at this point  
14 so that you will understand if this witness denies what  
15 you attempt to prove through her, I am not going to  
16 allow you to go back 20 years and impeach a witness  
17 that you have called where you know what the nature of  
18 the testimony is.

19 MR. SLEPION: May I say this --

20 THE COURT: Proceed.

21 MR. SLEPION: May I make a record, then,  
22 Judge. In terms of impeaching a witness, the credibility  
23 of any witness comes into context for a jury's  
24 determination in evaluating that witness' testimony.

25 THE COURT: Now, don't make a speech to me



1  
2 about what the credibility of witnesses is about. I  
3 am not going to permit you to use a tactic in this  
4 case that is not warranted by the facts. That's all.

5 I will get the jury and move on.

6 MR. SLEPION: Let me get my mind clear so  
7 I don't make a mistake in front of the jury.

8 THE COURT: I will give you a chance now to  
9 talk at length to this witness.

10 MR. SLEPION: If this witness denies to me  
11 what my client and investigation has shown, that is not  
12 going to establish anything to me, it is for this jury  
13 to determine whether there is propensity, whether there  
14 is motivation, whether there is predisposition.

15 THE COURT: You may run the risk of it, but  
16 I am not going to allow you to impeach the direct of  
17 this witness by going back into a record over 20 years.

18 MR. SLEPION: And I can't ask this witness  
19 whether she was convicted of larceny? I don't  
20 understand the ruling.

21 May I ask this witness if she has been  
22 convicted of grand larceny on four or five occasions as  
23 indicated and whether she has served 16 years in jail?

24 THE COURT: No, if that is all you are --

25 MR. SLEPION: That is not all I am going to do.

THE COURT: First, you will not ask her anything about her record until you go into whatever basic evidence you want.

MR. SLEPION: Absolutely.

THE COURT: Then I will make the decision.

MR. SLEPION: But then the jury can get the impression --

THE COURT: You will request a side bar conference.

MR. BATCHELDER: Do you want to talk with the witness?

THE COURT: I don't want to talk to the witness.

MR. BATCHELDER: Does he want to talk to the witness?

THE COURT: I have given him the opportunity to talk to this witness more than once.

MR. SLEPION: I don't. If I talk to this witness and she denies to me what I will establish through my client, then of what value is this?

THE COURT: Then you are impeaching your own client's testimony if she gives testimony opposite to that of your client.

MR. SLEPION: We are under this thing here

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that she is my client. She is in federal protective custody for the last three months, she has testified in the Grand Jury --

THE COURT: You made a misstatement, you didn't mean to say what you said, she is not your client.

MR. SLEPION: She can't be. She can't be my witness in the true sense of the word --

THE COURT: You move forward with your case and then I will make the rulings as we go along.

MR. SLEPION: Fine.

THE COURT: Call the jury in.

(Jury present.)

THE COURT: Call the next witness, please.

MR. BATCHELDER: The government will call Mr. Frederick Martorell.

MR. SLEPION: Your Honor, before that is done, my client wishes to apologize to the Court and the jury for being --

THE COURT: There is no need for it.

MR. SLEPION: This is because of a cab driver who could not find the building. Thank you.

F R E D E R I C K      M A R T O R E L L ,  
called as a witness by the government,

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having first been duly sworn, testified  
as follows:

## DIRECT EXAMINATION

BY MR. BATCHELDER:

Q What is your occupation, Mr. Martorell?

A I 'm a chemist with the Drug Enforcement  
Administration.

Q And you are employed by the Drug Enforcement  
Administration?

A Yes.

Q What are your duties as a forensic chemist,  
please?

A I analyze drug evidence and testify as to my  
findings in Court.

Q How long have you been so employed?

A Approximately three years.

Q And how many samples of cocaine have you  
analyzed, could you make a guess, over that period of  
time?

A About five, six hundred.

Q And how many times have you testified in  
Federal Court as an expert?

A About three dozen.

Q I show you what has been marked as

Government's Exhibit 1-A, B and C for identification, and ask if you can recognize these, please.

A Yes, I can.

Q Would you please tell the Court and jury what they are?

A Government 1-A is a lock seal envelope which originally contained Government 1-C when it was given to me for analysis.

Government 1-B is the lock seal envelope into which I placed Government's Exhibit 1-C after I analyzed it.

Exhibit 1-C is a plastic bag containing another plastic bag of white powder and an empty paper envelope.

Q I show you, also, what has been marked as Government's Exhibit 2-A, B and C for identification, and ask if you can recognize that, please.

A Yes, I can.

Q Would you please tell the Court and jury what that is?

A Government's Exhibit 2-A is a lock seal envelope which originally contained Government's Exhibit 2 when given to me for analysis.

Government's Exhibit 2-B is the lock seal

envelope into which I placed Government's Exhibit 2-C after analysis.

Government 2-C consists of a plastic bag containing another plastic bag of white powder.

Q You conducted an analysis on the contents of Government's Exhibit 2-C for identification and 1-C for identification.

Would you please give the Court and jury to your knowledge, what that constituted.

A Government's Exhibit 1-C consists of 10 7/10% cocaine hydrochloride and lactose.

Q And Government's Exhibit 2-C, please.

A Government's Exhibit 2-C consists of 7 7/10% cocaine hydrochloride and lactose.

Q And lactose you say?

A That's correct.

Q Fine.

Let me ask you, in your experience as a forensic chemist in analyzing cocaine, has lactose been used as a cutting agent for cocaine?

A It is a very commonly used cutting agent, yes.

MR. BATCHELDER: The government has no further questions at this time and would move into evidence Government's Exhibit 1-C for identification and



2-C for identification.

MR. SLEPION: Your Honor, I object to the introduction into evidence.

THE COURT: Objection overruled.

(Government's Exhibit 1-C and 2-C, respectively, received in evidence.)

MR. SLEPION: May I inquire?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. SLEPION:

Q Sir, in relation to the articles that you indicated contained 10.7 and the second article containing 7.7, you are referring to 10.7 out of 100%, is that correct?

A That's correct.

Q And 7.7 out of 100%, is that right?

A Correct.

Q And the terms, then, if something were 100% then that would be totally pure, is that right?

A Correct.

Q So that in the first article that you described as containing 10.7%, in effect, you are saying that 89.3% of that or, rather, 89.3% is sugar or lactose?

A That's correct.

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Q Is lactose a form of sugar?

A Lactose is a type of sugar.

Q So that is 99.3% sugar and 10.7% cocaine,  
is that right?

A That's correct.

Q And similarly, and the arithmetic we won't go  
through, but that is what the second situation is as  
well?

A That's right.

MR. SLEPION: I have no further questions.

THE COURT: The witness is excused.

(Witness excused.)

THE COURT: Call your next witness.

MR. BATCHELDER: Your Honor, at this time  
the government rests.

THE COURT: You may come up, Mr. Slepion.

(At the bench.)

MR. SLEPION: At the end of the government's  
case, I respectfully move the Court for a dismissal of  
both counts of the indictment in that the government  
has failed to establish a prima facie case.

THE COURT: Denied.

MR. SLEPION: I will call the witness that  
is in federal protective custody now, whatever name she

now is using. The defendant will go forward by calling the witness.

THE COURT: All right.

(In open court.)

THE COURT: The government rests. The defense may go forward.

MR. SLEPION: Your Honor, the defendant at this time respectfully requests the witness under the control of the government to be called.

M A R I O N     G R E E N B E R G ,     called  
as a witness by the defense, having  
first been duly sworn, testified as  
follows:

DIRECT EXAMINATION

BY MR. SLEPION:

Q     Is this Miss or Mrs. Greenberg?

A     Mrs.

Q     Mrs. Greenberg?

A     (Nodding head.)

Q     Mrs. Greenberg, are you also known by the  
name of Marion Ladd?

A     Yes.

Q     Which is your true name?

A     Actually, Greenberg is my maiden name. Ladd is



1 my -- I'm a widow and I've reverted to my maiden name.

2 Q During the year 1973, were you known as  
3 Marion Ladd or Marion Greenberg?

4 A Marion Ladd.

5 Q Beside the names Marion Ladd and Marion  
6 Greenberg, are you known by any other names?

7 A Yes.

8 Q What is that?

9 A Marsha Ladd.

10 Q Marsha Ladd?

11 A Yes.

12 Q Mrs. Greenberg, do you know a person by the  
13 name of Frank Stewart?

14 A Yes, I do.

15 Q Will you tell the Judge and the jury who  
16 Frank Stewart is?

17 A He's a man that I have been romantically  
18 interested in.

19 Q And for how long a period of time have  
20 you been romantically interested in Frank Stewart?

21 A About a year, I think.

22 Q Have you been living together?

23 A We did for several months.

24 Q Do you have any children?

1 A One son.

2 Q What is his name?

3 A Bruce Robinson.

4 Q Bruce Robinson?

5 A Yes.

6 Q Were you ever known by your last name as  
7 Robinson?

8 A Many years ago.

9 Q So that beside Marion Greenberg and Marion  
10 Ladd and Marsha Ladd, is it Marion Robinson?

11 A Marsha Robinson.

12 Q Are there any other names that you are known  
13 by?

14 A There may have been many years ago. I  
15 don't remember.

16 Q You don't remember how many different names  
17 you've used?

18 A I may have used other names years ago. I  
19 don't remember what they were.

20 Q Can you tell the Court for what purpose you  
21 might have had for using many other names?

22 MR. BATCHELDER: Objection, your Honor.

23 THE COURT: Objection sustained.

24 Q In relation to Frank Stewart, do you know  
25

whether Frank Stewart has been convicted of a crime?

A Do I know whether he has?

Q Yes.

A I believe he has.

Q Do you know whether or not he is serving a seven to ten year sentence right now?

A Yes, I do know he is.

Q Do you also know that he has another case that is pending next week in the U.S. District Court?

A Yes, I do.

Q Do you know what that case is for?

A Yes.

Q What is that case for?

A A drug sale.

Q And the case that he served seven to ten years for, do you know what that case was for?

A I think it was a drug sale.

Q Can you tell the Court approximately where you have been for the last three months?

A Under protective custody of the U.S. Government.

Q And where have you been residing as a guest of the U.S. Government?

MR. BATCHELDER: Objection. Irrelevant as to



form.

THE COURT: Sustained.

MR. BATCHELDER: Also, could we have the word  
"Guest" stricken, your Honor?

THE COURT: Yes.

Q Where have you been kept in federal protective  
custody by the federal government?

MR. BATCHELDER: Objection as irrelevant,  
your Honor.

THE COURT: Objection sustained.

Q In any event, you have been as what you call  
in federal protective custody for a period of at least  
three months, is that right?

A Yes.

Q Is that a jail?

A No.

Q Is it a hotel? What is it?

A It's an apartment.

Q And are you allowed visitors and egress  
and access to this apartment? Do you come and go as  
you please?

A Yes.

Q Who pays the rent for this apartment?

A I do.

Q The federal government doesn't pay anything for the upkeep of this apartment?

A I work.

Q What do you do?

A I'm a secretary.

Q To who or for who?

A Firm where I'm living.

MR. SLEPION: Your Honor, will the Court give me a ruling at this time that I am prohibited to inquire as to residence and whereabouts of this witness so I will stop that line of questioning?

THE COURT: You can come up and tell me why you deem it is relevant. I will consider it.

Why is it relevant for you to know where she is living?

(At the bench.)

MR. SLEPION: I believe it is relevant at this time to know where this witness is living in terms of possible motivation and the extent to which the government --

THE COURT: What possible motivation --

MR. SLEPION: Well, whether she is living in an apartment in a slum area, whether she is living in an apartment somewhere in Honolulu or whether --

THE COURT: All right. The objection is sustained.

(In open court.)

DIRECT EXAMINATION

BY MR. SLEPION (CONTINUED):

Q Do you live in this apartment alone?

A Yes, I do.

Q And during that three-month period of time, are you in constant contact with the agents of the federal government?

A Yes, I am.

Q Do you report to agents of the federal government?

A No, but they contact me regularly.

Q And aside from this contact, you are pretty much free to do whatever you want, is that right?

A Yes.

Q Can you tell the Court when Frank Stewart was arrested for the case for which he received seven to ten years?

A Before I met him. I don't know when it was.

Q Do you think that is more than a year ago?

A Yes.



1           Q       Can you tell the Court when Frank Stewart  
2  
3       received seven to ten years?

4           A       I think it's a couple of months now. Maybe  
5       three or four months, even. I don't know what the date  
6       was. I wasn't there.

7           Q       And until the time that he received the  
8       seven to ten years which you estimate to be a couple of  
9       months ago, was he out on bail or prole or something?

10          A       He was out on bail for a very short time.  
11       He was -- he was remanded, I think, about seven months  
12       ago.

13          Q       During the years of 1973, was Frank Stewart  
14       - out of jail?

15          A       For a short length of time.

16          Q       And was it during the year of 1973 that you  
17       became an agent for the federal government?

18          A       It was before that.

19          Q       When did you become an agent for the  
20       federal government?

21          A       I think it's about --

22                   MR. BATCHELDER: I object to the word  
23       "agent," your Honor. I don't know whether she is an  
24       agent or can classify her as an agent or not.  
25

1  
2 THE COURT: What was your relationship with  
3 the federal government?

4 THE WITNESS: I worked with one of the agents.

5 Q Would you say, then, that you were an agent  
6 of an agent?

7 MR. BATCHELDER: Objection, your Honor. It  
8 calls for a legal conclusion.

9 THE COURT: I will let her answer that.

10 A I don't think I was an agent. I worked  
11 along with an agent.

12 Q You were an informer, weren't you?

13 A Yes.

14 Q Did you have one specific agent that you  
15 worked with in your informing days?

16 A There were several agents, but one that was  
17 always present.

18 Q And who was the one that was always present?

19 A Stanley Martin.

20 Q What about Joseph Keefe?

21 A He was there some of the times, most of the  
22 time.

23 Q When were you given your number as an agent?

24 A I was never given a number as an agent.

25 Q When were you given your number as an

1  
2 informer?

3 A I was never given any kind of a number that  
4 I know of.

5 Q You are not aware of a number that refers to  
6 you, is that right?

7 A No, I'm not.

8 Q Do you recall giving a party to raise bail  
9 for Frank Stewart?

10 A It was not to raise bail, it was to raise  
11 lawyer money.

12 Q And when was that party given?

13 A I really don't remember the date.

14 Q Was Frank Stewart in jail at the time you  
15 gave this party?

16 A Yes, he was.

17 Q And after the party did Frank Stewart shortly  
18 come out of jail?

19 A No, he did not.

20 Q So how long would you estimate at this  
21 point in time that you have been an informer for the  
22 government?

23 A Two years or more.

24 Q In relation to your son, that is Bruce, is  
25 that right, Bruce Robinson?



1  
2 A Yes.

3 Q He is presently facing charges of  
4 extortion, is that right?

5 A My son never faced charges of extortion.

6 Q Are you indicating your son has not been  
7 arrested for extortion?

8 A I am indicating that he has not been  
9 arrested.

10 Q Will you tell the Court and the jury how it  
11 came about that you became an informer for the  
12 federal government?

13 A Yes.

14 There was a man in Englewood, New Jersey,  
15 by the name of Frank Moden who had taken, through false  
16 pretentions, \$60,000 of my money. I wrote Frank a  
17 letter. I had known him many years and I wrote him a  
18 letter telling him that if he did not return the  
19 money I would go to the police and tell them of  
20 some activities that I knew he had been involved in.

21 When Frank called me on the phone he  
22 called me that I could get back my money \$10,000 at  
23 a time, if I came over to his home that night I could  
24 get \$10,000 back that night.

25 My son was home from college at the time

1 and I asked him if he would like to drive over with  
2 me and ask Frank if it was all right to bring him, he  
3 said yes.  
4

5 My son had no knowledge of why I was going.

6 As we were leaving, one of his friends, one  
7 of Bruce's friends, came into the house and Bruce said,  
8 "Ronny, do you want to take a drive with us," and  
9 Ronny came along. A friend of mine's son took us, also.

10 When we got over to Frank's house and I  
11 knocked at the door they said he wasn't home. We waited  
12 in the driveway in the car and four or five detectives  
13 came up to the car and took us down to the prosecutor's  
14 office. In the process one of Bruce's friends had a  
15 refer in his pocket and a bag of some kind of -- I  
16 don't know whether it is or was heroin or cocaine.

17 I was told by the detectives then that they  
18 would hold this boy and that Bruce can be held as  
19 an accessory. Bruce was not held as an accessory, and  
20 this is the way I became involved with the government.  
21 There were two people from the Task Force present that  
22 night and they spoke with me.

23 Q You became an informant for the government  
24 for what reason?

25 Because they told me that my son could be held

2 as an accessory because the other boy had  
3 dope in his pocket.

4 Q And they never mentioned anything to you  
5 about accessory in relation to extortion charges?

6 A Never.

7 Q And because he could have possibly have been  
8 held as an accessory, it is at that time that you  
9 became an informant?

10 A Absolutely.

11 Q You say you were tricked out of \$60,000?

12 A That's right.

13 Q That is a kind of a turn of events  
14 for you, isn't it?

15 A Yes, it is.

16 MR. BATCHELDER: Objection to the form,  
17 your Honor.

18 THE COURT: Sustained.

19 Q Have you ever been convicted of a crime?

20 A Yes, I have.

21 MR. BATCHELDER: Objection, your Honor.

22 THE COURT: I will sustain the objection  
23 at this time.

24 Q Can you recall the month and the year that  
25 this possible difficulty of your son's came into being?



1  
2           A       My son didn't have any difficulty.

3           Q       You say you became an agent or you  
4 became an informer because your son was possibly going  
5 to be an accessory?

6           A       Yes.

7           MR. BATCHELDER: Your Honor, is this  
8 direct examination or cross examination in form?

9           THE COURT: Well, I am going to hold very soon  
10 that this area of inquiry is exhausted. We are getting  
11 into matters that are utterly irrelevant.

12           MR. SLEPION: Well, I object to that,  
13 your Honor. I would ask the Court for a ruling that since  
14 this witness is in federal protective custody, that she  
15 is an informer for two years, that certainly the  
16 Court declare her a hostile witness.

17           THE COURT: No, I am not going to declare  
18 her a hostile witness. You were given a full  
19 opportunity to talk to her in advance.

20                   Now let us move on and please don't make  
21 statements in the presence of the jury that should not  
22 be made in the presence of the jury.

23                   You will be governed by the testimony of  
24 the witness and not by statements of counsel.

25           Q       How long have you known my client?

1  
2 A Three or four years.

3 Q And how did your meeting with my client  
4 come about the first time?

5 A I believe I first met her when she was a  
6 barmaid at the Tatler's.

7 Q How long ago was that?

8 A Possibly three years ago. I don't know.

9 Q Were you ever aware of her apartment being  
10 burglarized?

11 MR. BATCHELDER: Objection as being  
12 irrelevant, your Honor.

13 A No.

14 THE COURT: She has answered that.

15 Q Have you on any occasions indicated to my  
16 client that you could retrieve property that was taken  
17 from her?

18 A No.

19 Q Have you on various occasions solicited  
20 my client for sexual activities with yourself or other  
21 people?

22 A Absolutely not.

23 Q Do you recall at any time threatening my  
24 client?

25 A Never.

1  
2 Q Did you ever produce a gun indicating to  
3 my client --

4 A I have never owned a gun nor ever held one.

5 THE COURT: Well, proceed. Do you have any  
6 other questions?

7 MR. SLEPION: Oh, I have lots of questions.

8 THE COURT: Pardon?

9 MR. SLEPION: I have lots of questions.

10 THE COURT: Then put them.

11 MR. SLEPION: I just don't work that way,  
12 Judge, I need some time to look.

13 THE COURT: Please let us move along. Let  
14 us not have these long delays now.

15 Q Did you start to work with an agent by the  
16 name of Keefe in February of 1973?

17 A I don't know what the date was when I started  
18 with Mr. Keefe, but he was there with Mr. Martin from  
19 the start.

20 Q Do you recall from the months of February,  
21 March, April, May, June, July and August of 1973  
22 trying to get my client to sell drugs for you?

23 A To sell them for me?

24 Q Yes, for you.

25 A I never carried any drugs.



Q Do you recall during those months ever trying to get my client to sell drugs for you?

A No.

Q When do you say was the first time that you had a conversation with my client in relation to the sale or transferring of a drug?

A I called her up sometime in August on the telephone and I asked her if she would sell an ounce of cocaine to a friend of mine and she told me that she would and the price would be \$800.

Q And that is the sole extent of your activities in relation to my client in relation to the sale of a drug?

A Yes.

Q One phone call?

A Yes.

Q And it was through your efforts, am I correct, that my client came into contact with Detective Mahone, is that right?

A Yes.

Q You set up a meeting between my client and Detective Mahone?

A Yes, I did.

Q And when did you do that?

1  
2 A Over the telephone. When I asked her to  
3 sell him -- to sell my friend the cocaine, she told  
4 me to come to the Tatler at 8:30 that evening.

5 Q Isn't it a fact that you were at the Tatler  
6 the day before and left cocaine there for my client?

7 A Absolutely not.

8 Q Isn't it further a fact that the \$800 that  
9 you are talking about is the price that you fixed?

10 A No.

11 Q And isn't it a further fact that the next day  
12 you came and retrieved the \$800?

13 A No.

14 Q Mrs. Greenberg, there came a second time  
15 on September 11th of 1973. Do you know anything about  
16 that date?

17 A I don't know what you are talking about.

18 Q Isn't it a fact that on September 10th you  
19 called my client and told her you were going to come over  
20 and that she had to sell a drug for you once more and  
21 then you would leave her alone?

22 A No.

23 Q And that that day you brought over another  
24 ounce of cocaine and left it there?

25 A No.

Q And the following day you were to pick up not \$800, but \$850 this time?

A No.

Q Since February of 1973 up until September 11, 1973, can you estimate for the Court and jury approximately how many people you set up?

MR. BATCHELDER: Objection to the words "set up", your Honor.

THE COURT: Sustained.

Q How many people you introduced to agents of the federal government.

A I think there were about 17 to 18.

Q From February until September?

A Oh, I don't know. I don't know how many in that period of time.

Q Yes. I am only interested up until September 11th.

A I don't know during that period of time.

Q Would you say it might be more than four or five?

A I don't know.

Q But you used the term 17, is that right?

A That's for the two years that I worked with them.



1  
2 Q I see. And you are indicating to the  
3 Court and the jury that you introduced people to the  
4 agents of the federal government for possible sales of  
5 drugs, is that right?

6 A Yes.

7 Q And you did that, you introduced 17 people  
8 because your son was possibly in some way going to be  
9 an accessory to some kind of a crime?

10 A Yes.

11 Q That was it?

12 A Yes.

13 Q Were you given any promises by the agents as  
14 to what they would do for you if you kept producing  
15 people for them?

16 A None.

17 Q None at all?

18 A None.

19 Q In relation to your former boyfriend, Frank  
20 Stewart, were you given any indications by the federal  
21 government as to what benefits would accrue to Frank  
22 Stewart as a result of your activities?

23 A Absolutely none.

24 Q Frank Stewart got into difficulty before your  
25 son, is that right?

1  
2 A Yes.

3 Q So that before your son was involved in any  
4 activities, you were already an informer, weren't you?

5 A I didn't know Frank Stewart at that time.

6 Q When did you start living with Frank  
7 Stewart?

8 A About seven or eight months ago . Just  
9 before he went away. Maybe a month or two before he, you  
10 know, went back into jail.

11 Q And you say you were romantically interested  
12 in him, is that right?

13 A Yes.

14 Q Were you going to marry him?

15 A He's a married man.

16 Q You were living together, is that right?

17 A Yes.

18 Q You say that Frank Stewart was convicted  
19 of a crime of selling drugs.

20 Can you tell the Court and jury who set him  
21 up?

22 MR. BATCHELDER: Objection to the word  
23 "set up," your Honor.

24 THE COURT: Sustained.

25 Q Who introduced him?

1  
2 MR. BATCHELDER: Your Honor, can we have a  
3 cautionary -- this seems to be a fetish with  
4 Mr. Slepion, your Honor, the words "set up." May  
5 we have a caution that --

6 MR. SLEPION: I will try to refrain from  
7 using the term "set up," your Honor.

8 A Which case --

9 Q Can you tell the Court and the jury who  
10 introduced a federal agent to Frank Stewart?

11 MR. BATCHELDER: Could we have what  
12 charge it is, your Honor? There are two charges.

13 Q Well, if you know, both.

14 A Which charge of Frank Stewart are you  
15 speaking about?

16 Q Well, I really don't know that much about  
17 Frank. Say the first one in New Jersey.

18 A I don't know who introduced him.

19 Q The one that is here in the U.S. --

20 A I introduced him.

21 Q You introduced him?

22 A Yes, and I was not going with him at the  
23 time.

24 Q You caused Frank to sell a drug to an agent  
25 for which he is now going to be on trial for, yourself?



1  
2 A Yes.

3 Q And this is also because of your son,  
4 Bruce?

5 A I was -- I did not -- I was not going with  
6 Frank at the time.

7 Q I know. You only used to live with him, I  
8 know that.

9 A I was not living with him at the time.

10 MR. BATCHELDER: Objection.

11 THE COURT: Please, now, I must ask you to  
12 refrain from such comments and not argue with the  
13 witness and put proper questions and stay with relevancy.

14 MR. SLEPION: Yes, your Honor.

15 Q When did you introduce an agent to  
16 Frank Stewart?

17 A Several months before I started to live with  
18 him.

19 Q Before you started to live with him?

20 A Yes.

21 Q In relation to the case that is here in the  
22 Southern District --

23 A Yes.

24 Q Well, then when you started to live with  
25 him, did you ever tell him, "Listen, you dealt drugs to

an agent."

A No, I never told him.

Q And this was also in the realm of helping your son, is that right?

A Yes.

Q Did you ever tell my client that if she did not accommodate you, that you would have lye thrown in her face and have her body mutilated?

A No.

Q Were you at any time sexually interested in my client?

A No.

Q Now, you said before that you were at one time tricked out of \$60,000, is that right?

A Yes.

Q And you also answered my question indicating that that is a kind of a turn of events for you, is that right?

A Yes.

Q And by that do you mean that during your lifetime you have tricked a lot of people out of certainly a lot more money than \$60,000?

MR. BATCHELDER: Objection as irrelevant, Your Honor.

THE COURT: Well, I will allow it.

A Probably I have.

Q Will you estimate to this Court about how much money you tricked people out of in your lifetime?

A I have no idea.

Q Would you say a couple of hundred thousand?

A I don't know.

Q Weren't you known at one point as a real king-pin con artist?

A MR. BATCHELDER: Objection, your Honor. Again, this is --

THE COURT: Objection sustained.

Q The money that you indicate which was at least \$60,000 that you have tricked people out of, can you explain to the jury how you did this tricking?

MR. BATCHELDER: Objection as irrelevant, your Honor.

THE COURT: Objection sustained.

MR. SLEPION: Well, your Honor, at this time I certainly ask this witness to be declared a hostile witness.

THE COURT: I ruled. Now put your next question.



1  
2 MR. SLEPION: I wish to approach the  
3 side bar so it may be put on the record.

4 THE COURT: Yes, you may come up.

5 (At the bench.)

6 MR. SLEPION: Judge, I think it has become  
7 clearly apparent this witness' responses to my questions  
8 are all in the negative in relation to threats, coercion,  
9 which my client herself will testify to, that this  
10 witness is certainly not only a hostile witness, but  
11 that her character and reputation has to come before  
12 this jury in terms of her credibility in the negative  
13 answers to my questions and at this time I most  
14 respectfully request the Court to allow me to ask her  
15 about previous convictions, only convictions, in order  
16 that the jury may weigh the credibility of her responding  
17 that she never threatened my client and that she was  
18 never sexually interested in my client and that she  
19 never caused anybody to come into my client's bar and  
20 do anything to her.

21 I think that certainly the credibility of  
22 any witness is an issue and I just can't help but  
23 see how the jury can get a true picture in evaluating  
24 this person without knowing that this person is a  
25

convicted felon and let them judge and weigh for

themselves what they think of her testimony.

THE COURT: Have you finished?

MR. SLEPION: Yes, sir.

THE COURT: It has been evidenced to me that you knew from the start that this witness would not substantiate or corroborate in the slightest way what you told the jury yesterday and that you deliberately called her aware of this in order to be able to get before this jury the fact that this person had a prior record.

This is a tactic I have rarely seen and it is a dust-throwing tactic and I sustain the objection, and let us go on and there will be no further discussion about it.

MR. SLEPION: May I then complete the record.

It seems to me, your Honor --

THE COURT: Please. You are not going to make any more speeches. You have stated it in full on the record. Let us go ahead.

MR. SLEPION: They don't know she has a record and I have to go on trial like this?

THE COURT: They already heard.

MR. SLEPION: No, they didn't. Let me ask

1 whether she was convicted of a crime without me going  
2 into it. I can't believe it.

3  
4 THE COURT: Let me finish. You are going  
5 back over 20 odd years and I will hold that having  
6 called this witness with full knowledge that  
7 she would deny certain allegations made by your client,  
8 the only purpose of calling her was to get the record  
9 before the jury. The record is more than 20  
10 years. I will not allow it.

11 MR. SLEPION: That is not true, it is not  
12 more than 20 years, her last conviction is 1956. That  
13 is 15 years ago.

14 THE COURT: I sustain the objection.

15 MR. SLEPION: I object and I move for  
16 a mistrial that this jury is not being given a fair  
17 opportunity to evaluate the credibility of the  
18 government informer and that my client cannot  
19 get a fair trial when a jury does not know that this woman  
20 has served 14 years in jail and has at that point had  
21 lesbian activities. I can't even ask her whether she has  
22 had lesbian activities to set the premise for this  
23 because you are denying me the opportunity to even ask  
24 that.

25 THE COURT: Go ahead and proceed now.



1  
2 MR. SLEPION: Can I ask if she was convicted  
3 of a crime?

4 THE COURT: I will let you ask that and that  
5 is all she will be asked.

6 (In open court.)

7 THE COURT: Mr. Slepion, will you put your  
8 next question, please?

9 MR. SLEPION: Yes, I will, Judge.

10 DIRECT EXAMINATION

11 BY MR. SLEPION: (CONTINUED)

12 Q Mrs. Greenberg, have you ever been  
13 convicted of a crime?

14 A Yes, I have.

15 Q Can you estimate how many crimes?

16 MR. BATCHELDER: Objection, your Honor.

17 THE COURT: Objection sustained.

18 Q Did you ever serve time in jail?

19 MR. BATCHELDER: Objection, your Honor.

20 THE COURT: Objection sustained.

21 Q In relation to your son that you were  
22 talking about before, can you give the Court the  
23 time and place of this occurrence?

24 A It was in Englewood, New Jersey on Woodlawn  
25 Avenue and I do not remember the date.

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2 Q And was he, in fact, arrested?

3 A No, he was not.

4 Q And is it true that because of your promise  
5 of being an informer and introducing 17 people, your  
6 son has not been arrested for this crime?

7 A I don't know whether that is the reason he  
8 hasn't been arrested.

9 Q Do you know of any pending cases against  
10 Mr. Stewart other than the one that is in the Southern  
11 District right now?

12 A No.

13 Q Do you know of any other pending cases or  
14 possible cases against your son at this time?

15 A Absolutely not.

16 Q Do you have any cases that are possibly  
17 pending against you at this time?

18 MR. BATCHELDER: Objection, your Honor.

19 THE COURT: Objection sustained.

20 Q Is it a fact that you are wanted at this  
21 time?

22 MR. BATCHELDER: Objection, your Honor.

23 THE COURT: Objection sustained.

24 MR. SLEPION: May we approach the bench,  
25 please?

THE COURT: No. Go ahead, please, now.

There are clear rules of evidence. Put your next question.

Q Are you still an informer for the federal government?

A No.

Q You stopped introducing people to agents?

A Yes.

Q When did you stop?

A When I was taken into federal custody -- when I was taken into custody by the federal government.

Q Do mean when you were placed in an apartment somewhere?

A Yes.

Q You are really not in custody, are you?

A I 'm in what they call protective custody, but I live by myself and I am under the custody of the U.S. Marshals.

Q And you work, is that right?

A I work.

Q And you have an apartment?

A Yes.

Q And you go to work and come back?

A Yes.



Q And you go, come, movies and date and do anything you want?

A If I want to.

Q And you go to any restaurant you want?

A Yes.

Q And you can live with anybody you feel like?

A Yes.

Q And you say you are in custody?

A Yes.

Q Were you told how many people you had to introduce before it would be finally finished?

A No.

Q Well, did you intend to become an informer for life when you first started this?

A No.

Q Did you have in your own mind how many people you have to try to give up in order to help your son?

MR. BATCHELDER: Your Honor, objection. Irrelevant, your Honor.

THE COURT: Objection sustained.

Q Well, who determined the cut-off point?

MR. BATCHELDER: Objection, your Honor.

THE COURT: Objection sustained.

1  
2 Q Did the federal agents, did any federal agents  
3 finally tell you, "Listen, Marsha, we have had enough  
4 from you."

5 A I was told one day that I was moving and  
6 that was the way they told me.

7 Q Who told you you were moving?

8 A One of the agents.

9 Q What was his name?

10 A He came to me with a marshal and said,  
11 "You are moving".

12 Q What is his name?

13 A Stanley Martin.

14 Q Did you have any conversation with him at  
15 that point?

16 A No. I was told that he had no more jurisdiction  
17 over me.

18 Q Did you ever ask him to get out of this role  
19 before he came to you?

20 A No.

21 Q Did anybody ever tell you, "We'll tell you  
22 when your time is up, Marsha"?

23 A No.

24 MR. BATCHELDER: Objection.

25 THE COURT: She has answered it.

Q During this period of time when you were an informer, you say you introduced a number of people to agents?

A Yes.

Q These people besides your man that you lived with, were they other friends?

A They were people that I knew over the years.

Q And you have known those people for a long time?

A Some of them.

MR. SLEPION: I respectfully request, your Honor, a side bar conference.

THE COURT: All right, you may come up.

(At the bench.)

MR. SLEPION: Judge, maybe I am naive, I don't know. I don't understand how I can properly represent my client's interests in terms of the allegations that my client has told me and an investigation that I have done in relation to her criminal record where I know of years that she has spent in jail, of lesbian activities that occurred in women's prison, that she was in.

This woman has spent over 14 years in jail



1 and I'm not allowed for a jury to even weigh the  
2 possibility. It looks like --

3  
4 THE COURT: You are going over the same  
5 thing.

6 MR. SLEPION: That is what I am asking you,  
7 Judge, to think about it for a minute again.

8 It looks like I just made this stuff up for  
9 a jury.

10 THE COURT: From the start of this it was  
11 perfectly obvious that you knew that this witness would  
12 not substantiate in the slightest respect your  
13 client's version, which I haven't yet heard but which  
14 you opened to the jury and told the jury about.

15 MR. SLEPION: Yes.

16 THE COURT: The way to present your case is  
17 to offer the proof of your client.

18 MR. SLEPION: I am going to do that --

19 THE COURT: Mr. Slepion, we are going to cut  
20 this short.

21 MR. SLEPION: I am going to do that right  
22 now.

23 THE COURT: No. I said we are going to cut  
24 this conversation short.

25 MR. SLEPION: Then I would request the Court

to make this possible ruling, that after my client testifies allow me to bring back this hostile witness for the purposes of --

THE COURT: No, I am not going to agree she was a hostile witness. You knew in advance what she was going to testify to.

MR. SLEPION: She was in federal custody. How could she be my witness?

THE COURT: This is ended. Please step away from the side bar.

MR. SLEPION: May I bring her back afterwards?

THE COURT: Please step away from the side bar.

(In open court.)

DIRECT EXAMINATION

BY MR. SLEPION (CONTINUED):

Q Did you ever live with a person by the name of Boston?

A Yes.

Q And you introduced Boston to a federal agent, too, didn't you?

A Yes, I did.

Q Did you ever live with anybody by the name of County?

A Yes.

Q Did you introduce Count to a federal agent, too?

A Yes.

MR. SLEPION: I have no further questions at this time of this witness, except I will ask, again, for a ruling --

THE COURT: You will make no request in front of the jury. I told you that before, you have no further questions. That ends it.

You may question the witness if you so desire.

MR. SLEPION: I wish the witness to be held for possible recall.

THE COURT: Will you please conduct your examination, if you have any?

MR. SLEPION: I have a motion, your Honor, to hold the witness for possible recall by counsel.

THE COURT: Will you please conduct your examination.

MR. BATCHELDER: Thank you, your Honor.

CROSS EXAMINATION

BY MR. BATCHELDER:

Q Mrs. Ladd, my name is Harry Batchelder.



1 I'm sure you have met me before.

2 I would just like to ask you one question.

3 You say you used the name Robinson. Was  
4 that your husband's name at that time?

5 A Common-law husband. He was my son's father.

6 Q With respect to Frank Stewart, briefly,  
7 Frank Stewart was charged in this case, in the case  
8 presently pending before Judge Lasker, sometime in July,  
9 was he not, somewhere in that area?

10 A I think so.

11 Q And he was in New Jersey State custody prior  
12 to that, is that correct?

13 A Yes.

14 Q Were you placed in protective custody because threats  
15 were made on your life?

16 A Yes.

17 Q With respect to your son's charges in New  
18 Jersey, did the government, federal government, make  
19 any promises with respect to what would be done with  
20 those charges?

21 A There weren't any charges against him. They  
22 never held him. But the government made no promises to me.

23 Q And do you know of your own knowledge whether  
24 any government agent or anyone else appeared on his behalf?  
25

A No.

MR. BATCHELDER: The government has no further questions of this witness, your Honor.

THE COURT: All right, you may step down.

(Witness excused.)

THE COURT: Call the next witness, please.

J O V A N A      G U A R D I ,    called as a  
witness on her own behalf, having first  
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SLEPION:

Q      Miss Guardi, how old are you?

A      32.

Q      Have you ever been convicted of a crime?

A      No.

Q      What kind of work do you do?

A      A barmaid.

Q      For how long have you been employed as a  
barmaid?

A      12 years.

Q      12 years?

A      Yes.

Q      When for the first time did you meet the  
previous witness?

A About three years ago.

Q And under what circumstances was that?

A She was a customer in a bar on 8th Avenue  
called Woody's.

Q Woody's?

A Yes.

Q Do you know where that is located on 8th  
Avenue?

A 8th Avenue and 54th.

Q And 54th?

A Yes.

Q Did you ever have any conversations with her  
at that time in Woody's?

A Outside of a drink and where did I work  
before and all that.

Q Did there come a time when Marsha indicated  
to you that she could help you out?

A Yes.

Q Would you tell the Court and the jury about  
this?

A I worked in Woody's for about three months  
and I got robbed and --

Q When you say you got robbed, can you explain  
what you mean?

A My apartment was robbed, everything I owned.



Q You weren't home, were you?

A No.

Q You mean your property was burglarized?

A I was robbed as far as I was concerned.

Q All right. What happened in relation to this?

A She heard about it and she said she could probably find out where my stuff was, she had people she knew that received stolen property.

Q Do you know whether or not she was ever convicted of possessing stolen property?

A No, I don't know.

MR. BATCHELDER: Objection, your Honor.

THE COURT: Objection sustained.

Q Go ahead.

A And she called me a couple of days later and said she had bought me some presents and wanted me to come up to her apartment for dinner and I refused.

Q Then what happened?

A Nothing. She left me alone for a couple of weeks and then she called the bar looking for various men. She come in with a bunch of people and then I got transferred to the east side bar, which was the Tattler, because I got jumped on in Woody's by two of her friends

in the bathroom.

Q Male friends or female friends?

A Female friends.

Q Did there come a time during this period of association that she made lesbian overtures to you?

A Yes.

Q Will you tell the Court about that?

A She used to call me up on the phone and ask me what I was wearing, did I have sex last night, would I come and have sex with her and her friends, did I want to go out with them.

Q You say there came a time when you were transferred to the bar known as the Tatler?

A Yes.

Q Where is that located?

A 57th Street and Lexington. I think it's 141.

Q 57th and Lex?

A Yes.

Q Did Marsha follow you from Woody's to the Tatler?

A Yes, she did.

Q What occurred between you and Marsha at the Tatler?

A Well, she asked me what was I doing working in a bar, why didn't I come to work with her.

Q Did she ever explain what that meant, go to work with her?

A Yes. She had people that she knew that ran houses, prostitution houses, and that I can make just as much money as I did working in ten hours for two hours and she knew numerous men that wanted to bed with me for money.

Q Did she ever ask you to help her in a con game?

A Yes, she did.

Q Will you explain to the Court and jury just what that meant?

A She said that she had a plan to get some kind of jewels worth about \$85,000 from somebody and if I would help and she would come over and talk to me.

Q Do you know whether or how many times, rather, Marsha has been convicted of a crime?

A A lot.

MR. BATCHELDER: Objection, your Honor.

THE COURT: Objection sustained.

MR. SLEPION: Of her own knowledge, your Honor.



THE COURT: Objection sustained. Please. That is an utterly improper question to this witness. Put your next question.

Q Now, for how long a period of time at the Tatler did Marsha request you to change your status from a barmaid to something other --

A For about six months, seven months.

Q During that period of time --

THE COURT: Six, seven months during what period of time, what year?

THE WITNESS: 1973.

MR. SLEPION: I will rephrase the question, Judge.

Q When did you start to work at the Tatler?

A I started to work at the Tatler '72. The end of '71, '72.

Q Did there come a time in 1973 when Marsha's requests turned to something more than requests?

A Yeah. She asked me to do many things.

Q Will you tell the Court and jury what occurred in relation to any possible threats?

A I used to have men following me home every night after work, people in the bar. Somebody threw a drink at me, threatened to cut me up.

Q Did there come a time when Marsha told you that she would have you hurt if you didn't sell or give drugs?

A Yes.

THE COURT: Aren't you leading the witness now and can't we get down to the dates that are referred to in this indictment? This is a general statement going over a period of time. Let us get down to the case that is in issue here.

Q Will you tell the Court what occurred in relation to Marsha's threats with you?

A With her threats? She called me up on the phone, had people --

THE COURT: Pardon me. Fix the time on this.

MR. SLEPION: The time, your Honor, between the period of February --

THE COURT: No. Put the question to the witness.

Q During the period of February 1973 and up until August 22, 1973, would you explain to the Court and the jury Marsha's activities with you in relation to trying to get you to do something?

A She called me ever day on the phone, if not

1 at work at home, saying she had something for me to  
2 do and I had to do it for her and I wouldn't get into any  
3 trouble and she had people that would hurt me and if I  
4 didn't do it I'd be in trouble.  
5

6 Q What did she say would occur to you?

7 A She said she would throw lye in my face.  
8 She came in the Tatler with a gun. She said she was going  
9 to cut me up. Somebody came in and threw a drink at  
10 me and told me he was going to cut my insides out  
11 if I didn't do what she wanted.

12 Q Did something occur on August 22nd of 1970?

13 A Yes. She called me at my home and said she  
14 wanted me to go to the Tatler, if I was working that  
15 night, she had something for me to do that I had to do.

16 She came down the bar and told me she was  
17 going to leave an envelope which she told me contained  
18 cocaine and all I had to do was give it to a  
19 friend of hers and he was going to give me some money  
20 and she would pick it up in a day.

21 Q Well, did she, in fact, do that?

22 A Yes, she did. She came up. We went upstairs  
23 and there was the bar upstairs and she hid it in the  
24 bottom. The bar came apart, and she put an envelope in  
25



there and she said, "If he comes in tomorrow, if I don't come with him, just give it to him."

Q By tomorrow, we are referring to August 23, 1973?

A Yes, yes.

Q What actually occurred on August 23, 1973?

A She came into the bar about 7:00 and she went upstairs and then she called me to come upstairs. I went upstairs and she put the envelope on the table and a friend of mine was in the bar who I called to come down --

Q That friend, can you give the Court his name?

A J.C.

Q You say you called him?

A Yes.

Q For what purpose?

A To come over because I didn't know if she was going to do anything to hurt me. And the manager wasn't in the bar and he was always around, so I just said, "Would you just stay here."

Q And did J.C. go upstairs?

A Yes, he did.

Q What happened upstairs?

1 A Well, he was sitting upstairs and Marsha came  
2 upstairs and she went to the bar and she took an  
3 envelope out and laid it on the table. Then we went  
4 downstairs and Ernie had come in, she had a drink and  
5 Ernie came in.  
6

7 Q When you refer to Ernie, you are referring  
8 to a witness called by the government, a Detective Ernest  
9 Mahone?

10 A Yes.

11 And he came in and then the three of us went  
12 upstairs and he asked me if the envelope on the table  
13 was his and I said yes. Then he took me in the ladies  
14 room and gave me some money and with that he left. He  
15 opened the envelope, tasted something and left.

16 Q Did Marsha ever tell you what to say to  
17 him if he should ask you any questions?

18 A Yes, she did.

19 Q What was that all about?

20 A She told me if he asked me how much out it  
21 would take to say it would take a one or a two.

22 Q Do you know what that meant?

23 A No, I didn't. I don't.

24 Q After this occurred, was the money retrieved?

25 A Marsha received it the next day.

1  
2 Q Then nothing happened until sometime in the  
3 beginning of the second week of September, is that  
4 right?

5 A Yes.

6 Q What happened then?

7 A About a week before I had trouble in the bar  
8 with a customer. He threw a drink at me and told me  
9 he was going to cut my insides out if I didn't do what  
10 Marsha wanted.

11 Marsha called me over the weekend and she  
12 said she was sorry, she heard what happened at the bar  
13 and that she wanted me to meet Ernie one more time and  
14 for me to meet her at the bar and she will give me another  
15 envelope and we'll put it in the same place and that  
16 she wouldn't be able to show up and to ask Ernie for \$850.

17 Q Then what happened on September 11, 1973?

18 A I met Ernie at the bar at 7:30.

19 Q What occurred?

20 A I gave him an envelope, we went in the back  
21 of the tables, I gave him an envelope. He asked me why  
22 I was so nervous. I asked him if he was a cop and he said  
23 no.

24 He asked me why I wasn't working there. I  
25 said I had a problem in the bar. So he asked me where



1 I was going to work next and how he can get in touch  
2 with me. I said he couldn't get in touch with me.

3 He said, well, if he wanted to see me again  
4 for some more cocaine. I told him to call Marsha.

5 Q Did he give you money?

6 A Yes, he did. He gave me \$800. I asked --  
7 Marsha told me to ask for \$850. He said he only had  
8 \$800 and since he was a friend of Marsha's I figured he  
9 could give the other money to Marsha, so I told him to  
10 give the other \$50 to Marsha.

11 Q And then what occurred with this \$800 that  
12 you were given?

13 A I gave it to Marsha the next day I met her in  
14 the Tatler's.

15 Q That is September 11, 1973.

16 After then did Marsha finally leave you  
17 alone?

18 A Yes, up until Thanksgiving. She had a  
19 dinner and all her friends and family, I guess, she  
20 invited me to come up there. She said I could  
21 make some money up there.

22 Q After this point, then, was there any further  
23 contact with Marsha?

24 A No.

1  
2 Q This first transfer was August 23, 1973.  
3 When again, then, did you hear from Marsha?

4 A I heard from her every week. She come down  
5 the bar mostly every night anyways.

6 Q But there was no further requests of you  
7 or demands or threats to you?

8 A No.

9 Q Okay.

10 A Nobody followed me home, nothing.

11 Q Do you recall when you were arrested in this  
12 case?

13 A About three months ago, four months ago.

14 Q That would be sometime in July? .

15 A Yes.

16 Q About ten and a half months after  
17 August 23rd, is that right?

18 A Yes.

19 Q Okay. Now, what happened immediately  
20 preceding your arrest?

21 A I received a phone call from Marsha. She  
22 wanted to know what I was doing. I said I was getting  
23 ready to go away. She said, well, she had to talk to me,  
24 it was very important, could I wait about a half hour. I  
25 said yeah.

1 I was getting ready to walk out the door  
2 and the detectives came in.

3 MR. SLEPION: Your witness.

4 THE COURT: Suppose we take our mid-morning  
5 recess at this time.

6 MR. BATCHELDER: Fine. Thank you, your  
7 Honor.

8 (Recess.)

9 \*

10 \*

11 (In open court, jury present.)

12 MR. BATCHELDER: May I proceed, your Honor?

13 THE COURT: Yes.

14 CROSS EXAMINATION

15 BY MR. BATCHELDER:

16 Q Miss Guardi, my name is Harry Batchelder  
17 and I am the Assistant who is trying this matter. If  
18 any of my questions don't appear clear, just ask me to  
19 speak up.

20 I would like to ask you just a few questions  
21 about this matter. All right?

22 Could you tell me about how long you worked  
23 at the Tatler Bar, please?

24 A I worked at the Tatler and Woody's, it was  
25 the same bar except one was on the west side, for about



three years.

Q For about three years? So that would be from what year to what year, please?

A '71, the end of '71 until last September.

Q Last September?

And could you please tell us about how much you made there a month?

A Yes. I make \$300 a week plus tips.

Q You make \$300 a week plus tips.

And what time did the Tatler's bar close?

A It closed at 4:00 in the morning.

Q And you say the Tatler Bar went out of business, is that correct?

A Yes, it did.

Q And when was that, please?

A The end of September.

Q Were you working at the Tatler's Bar in July of 1974?

A Yes.

Q You were?

A Yes.

Q And did there come a time when you were interviewed in the U.S. Attorney's Office?

1

2

A Excuse me?

3

Q Did there come a time when you were

4

arraigned and brought before a U.S. Attorney in the

5

U.S. Attorney's Office?

6

A You mean when I got arrested last time?

7

Q Yes, on July 17th.

8

A Was I working in the Tatler that month?

9

Q Yes.

10

A No.

11

Q Yes.

12

A My arrest this time?

13

Q Yes.

14

A No.

15

Q When --

16

A I mean, I was in the U.S. Attorney's Office,

17

but I wasn't working at the Tatler in July.

18

Q I thought you said in September the bar

19

closed.

20

A Yes, last September.

21

Q So what have you been doing since last

22

September, please.

23

A I was working part-time for bars. I'm not

24

working full-time.

25

Q You are not working full-time?

1  
2 A No.

3 Q And during the course of that interview,  
4 were you asked certain questions? Do you remember  
5 whether you were asked certain questions?

6 A At the D.A.'s office?

7 Q At the office downstairs, yes, at the time  
8 of your arrest.

9 A I wasn't -- just my name, address, what I  
10 did for a living.

11 Q And is your address 330 W.45th Street?

12 A Yes, it is.

13 Q Apartment 10-B?

14 A Yes, it is.

15 Q Would you please tell the Court and  
16 jury how much rent you pay there?

17 A \$400 a month.

18 Q And you have lived in that same building  
19 for three years, is that correct?

20 A Yes, but in this apartment for two months.

21 Q I believe you testified that certain threats  
22 were made to you in the year 1973 commencing early in  
23 the year of 1973, is that correct?

24 A Yes, sir.

25 Q Could you tell me when the first threat was



made to you?

A About three months before August. Let's see. June, around June they started.

Q And was that threat made by a male or a female?

A By a female.

Q By a female?

A Yes.

Q And who was that female?

A Marsha.

Q And what was that threat, please?

A They she wanted me to sell some cocaine for her, that she was going to throw lye in my face and she, she has known -- she knows people in the Mafia or something and if I didn't do these things for her she was going to hurt me, break my legs.

She came in the Tatler with a gun at one time. She had men following me home.

Q Please, just the first threat, just the first threat.

And did you tell anybody about this threat?

A No, I didn't.

Q You didn't tell the police?

A No, I didn't.

Q Did you tell any friends or anybody?

A No.

Q You told nobody about this threat?

A No.

Q Was this threat made in front of a group of people or was it --

A No, it wasn't.

Q It was just you and Marsha, is that right?

A Yes, sir.

Q Could you please tell us about the second threat?

A She came in there one night with --

Q Please would you give us a date.

A I can't give you dates, sir, because --

Q Just a rough time. Was it a month, could you tell us when it was?

A After the first one? About two weeks.

Q About two weeks. L

A But she used to call me every day on the threat.

Q And threaten you also on the phone?

A Yes, that's correct.

Q And you never told the police about that, also?

2 A No, sir.

3 Q About two weeks later she threatened you  
4 again, is that correct?

5 A Yes.

6 Q And where was that, in the bar?

7 A Yes, sir.

8 Q And this would be when, September of 1973?

9 A The end of August.

10 Q The end of August?

11 A Yes.

12 Q So there was one threat with her before  
13 August or during August at some period of time and then  
14 there was a threat afterwards, is that correct?

15 A Yes, sir.

16 Q And could you please tell us when that  
17 threat was?

18 A The end of August. She had told me that I  
19 had to do something for her and just to do it for her  
20 one time and she would leave me alone.

21 Q That is the end of August?

22 A Yes, sir.

23 Q Would you say it was the last week in  
24 August?

25 A Yes, it was.



1  
2 Q The last week in August?

3 A Yes, sir.

4 Q Do you know what date you are accused of  
5 having sold the cocaine in this case?

6 A August, sometime in August.

7 Q Do you know when in August, please?

8 A The 20 something I think.

9 Q August 23rd, is that correct? Does that  
10 refresh your recollection?

11 A I know it was sometime in August, the end  
12 of August.

13 Q Have you ever sold cocaine before this?

14 A No, sir.

15 Q So this would be something of a unique  
16 experience for you to sell cocaine, wouldn't it?

17 A I wasn't selling cocaine to my knowledge.

18 Q Whatever you did with the cocaine --

19 MR. SLEPION: I object, your Honor.

20 Let the witness fully answer his question before he goes  
21 on.

22 Q Go ahead.

23 A I wasn't selling cocaine to my knowledge.  
24 It was in an envelope. She said it was cocaine. It  
25 could have been anything. Anything was possible.

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25

Q I see.

A I never saw it.

Q You never saw this envelope, is that correct?

A No, sir.

Q Let me ask you, I show you what is known as Government's Exhibit 2 in evidence, did you ever see that envelope?

A No, sir.

Q You never saw this envelope?

A No.

Q You never gave this to Detective Mahone?

A No, sir. If I gave him anything it was in a plain white envelope.

Q In a plain white envelope?

A Yes, sir.

Q So there were two threats, there was a threat in August and then there was a subsequent telephone threat and then there was a third threat which took place sometime in the latter part of August, is that correct?

A Let me explain it. She has been threatening me, she has been having me followed for a period of six months before all this.

Q How do you know she had you followed?

1 GTPa

Guardi-cross

100

2 A She used to call me up and tell me she saw  
3 me walking with my dogs.

4 Q Did you ever bring this to the attention  
5 of the police?

6 A No, sir.

7 Q Did you ever bring it to the attention of  
8 your friends?

9 A No.

10 Q And when you were being threatened, it doesn't  
11 happen all the time, does it?

12 A Working as a barmaid it could. I don't know.  
13 I never had no trouble.

14 Q It could happen? So some people could be  
15 following you back from the bar, is that correct?

16 A No.

17 Q It never happened?

18 A No, because I had a steady cab driver all  
19 the time or my boss would take me home.

20 Q And if that was true, how could Marsha's  
21 people have followed you back home?

22 A They were right on the street where I live.  
23 If I go upstairs and take my dogs down for a walk, she  
24 was there with her friends.

25 Q She was always there?



1 A She said, she called me up the next day,  
2  
3 "I saw you walking with your dog."

4 Q And you never brought this to the attention  
5 of the authorities either, did you?

6 A No, sir.

7 Q Did you ever tell your mother, your  
8 friends?

9 A No, my mother is very sick.

10 Q I see.

11 At the time you were interviewed in the  
12 U.S. Attorney's Office, did you tell Mr. Slepion, who  
13 was present at that time, I believe, of these threats?

14 MR. SLEPION: Your Honor, I object to this  
15 line of questioning.

16 THE COURT: I will allow it. It was in the  
17 presence of other persons.

18 MR. SLEPION: It was also in the presence  
19 of an attorney, Judge, and I object to this line of  
20 questioning.

21 THE COURT: Overruled.

22 Q Did you ever say anything to Mr. Slepion  
23 about that?

24 A The day --

25 THE COURT: You are confining it to the

presence of --

MR. BATCHELDER: An Assistant U.S. Attorney.

A In his office? No, I didn't.

MR. SLEPION: May we have the date fixed on this, Judge?

MR. BATCHELDER: Sure. July 17th. Take a look at 3506.

MR. SLEPION: I would like to have the jury to have the date, I know the date.

MR. BATCHELDER: July 17th, your Honor.

MR. SLEPION: And the year.

MR. BATCHELDER: 1974, your Honor.

MR. SLEPION: Thank you.

Q Calling your attention to the events of August 23, 1973. late on that evening, I believe you testified that Marsha came over and left the drugs there, is that correct?

A The day before.

Q The day before?

A Yes.

Q On the 23rd. Did she do that also on September 11th, leave the drugs there?

A Yes, she did.

Q Where were the drugs left?

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GTpa

Guardi-cross

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A Upstairs in the Tatler there was another bar and the bottom of the rail came out where I used to keep the money, the night's receipts.

Q I see. And did you place what you thought was the white envelope there?

A No.

Q Marsha did?

A Well, she was there. I put it in the rail, yes.

Q I see. You put it in the rail?

A Yes.

Q And on the following day when Detective Mahone came into the bar with Marsha, did you sit down and have drinks with them?

A No, I didn't. Marsha came in alone first. She came in about ten minutes before.

Q Are you saying that Mrs. Greenberg never arrived at the bar with the agent?

A No, she came in first.

Q She came in first?

A Yes, sir, and sat down and ordered a drink.

Q And then --

A Then we went upstairs.

Q Then you went upstairs.



And who went upstairs?

A Marsha and I went upstairs first.

Q And was J.C. Easterling at the bar at that time?

A Yes, he was.

Q And did you have a conversation with J.C. Easterling?

A Yes, I did.

Q And did you have social drinks with Marsha when she was at that bar at that time?

A I don't drink. Marsha had a drink.

Q She had a drink?

A Yes.

Q And then it is your testimony that you went upstairs, is that correct?

A Yes, sir.

Q With Marsha?

A Yes, sir.

Q Leaving Detective Mahone downstairs, is that correct?

A He wasn't in here--he wasn't in there yet.

Q I see.

After you went upstairs with Mrs. Greenberg, what did you do?

1 A I took the envelope out that she had  
2 gave me the day before and placed it on the table.

3 Q I see. And then you came back down, is  
4 that correct?

5 A Yes. And then the three of us went upstairs  
6 again.

7 Q And that probably would have taken what,  
8 about five minutes, two minutes?

9 A Not even. Two minutes, three minutes.

10 Q And then you came back down and then  
11 Detective Mahone came in the bar, is that correct?

12 A Yes, sir.

13 Q And at that time were you introduced to him?

14 A Yes.

15 Q And did you ever have a conversation  
16 subsequent to that with J.C. Easterling after you  
17 talked with Detective Mahone?

18 A I don't understand what you mean.

19 Q Did you talk after you were introduced  
20 to Detective Mahone, did you talk to J.C. Easterling?

21 A Did I talk?

22 Q Yes.

23 A I said, "You know Marsha," I just said to  
24 J.C., "You know Marsha, don't you," and he said yes, he'd  
25

seen her.

Q Then you came back. Then what happened?  
Did you go upstairs with Marsha and the agent?

A Yes, I did.

Q And at that time you pointed to some narcotics  
on the table or an envelope on the table?

A Yes, sir, an envelope.

Q Did you ever tell Detective Mahone while  
you were having a conversation with him, did you ever  
ask him whether he wanted cocaine which would take --  
a street cocaine or a cocaine which would take a cut?

A In September Marsha asked me --

Q No, I am asking on August 23rd.

A No, sir, not in August.

Q You never said that to Detective Mahone  
at all?

A No, sir, nothing.

Q You said nothing, you simply walked upstairs,  
is that correct?

A Well, we did. We said hello. He asked  
me if that was the envelope for him and I said yes, it  
was, and then he took me in the ladies room upstairs  
and gave me some money.

Q I see.



2 A And told me to count it and that was all  
3 and he left.

4 Q I see.

5 At any time did you ever bring this to the  
6 attention of the authorities?

7 A No, sir.

8 Q Calling your attention to September 11, 1973,  
9 did you receive a phone call on the day before? Were  
10 you notified that Detective Mahone would be coming over?

11 A No, I wasn't. I wasn't working there.

12 Q You weren't working?

13 A I had quit a week before.

14 Q I see.

15 And did you appear at the bar on the  
16 evening of September 11th?

17 A Yes, I did.

18 Q And did Detective Mahone appear at the  
19 bar?

20 A Yes, he did.

21 Q And at that time did you have a discussion  
22 with Detective Mahone?

23 A Yes, we had a conversation that time, yes.

24 Q And did he then give you \$200?

25 A Yes, he did.

Q And did you then give him a white envelope?

A Yes, sir.

Q Did you take that envelope out from --

A No, I didn't.

Q You did not?

A I took it out of my pants pocket.

Q You took it out of your pants pocket.

A Yes.

Q Did you ever say to Detective Mahoney that lactose could cut?

A He asked me -- that's the time we had a conversation and he asked me what kind of cut did the people use, was it lactose or something or other. I said I didn't know what they could use. I said, "I guess you do use lactose, I don't know."

Q You said, "I guess you do use lactose."

A That's right.

Q And you did not know whether you use lactose or not, did you?

A No, because I don't bother with it, I don't know what you use for it, what you do with it.

Q Did there come a time when you retained Mr. Slepion?

A Excuse me?

Q Did there come a time when you retained the services of Mr. Slepion?

A Yes.

Q And at that time did you tell him the events which you have discussed?

MR. SLEPION: Objection, your Honor. May we have a side bar conference at this time?

MR. BATCHELDER: Sure.

(At the bench.)

MR. SLEPION: I would like to know the purpose of this line of inquiry, Judge, to see what this is about.

MR. BATCHELDER: Your Honor, in moving papers submitted on behalf of defense counsel, he stated, "At the time of her arrest and now, defendant Guardi simply cannot remember those facts which will enable her to contribute to her own defense and would institute valid fact-finding in a Court of Law.

Your Honor, it is a representative admission by the defendant in the moving papers which are a matter of record in this Court.

MR. SLEPION: Also then --

THE COURT: Admission of what?

MR. BATCHELDER: Admission -- the law



ala Wigmore that if the lawyer has been directed by the witness to act on her behalf and if he makes statements that are directly contradicted by her testimony on the stand --

THE COURT: You are going into the question of credibility now?

MR. BATCHELDER: Yes.

THE COURT: I won't let you go into the details of it.

MR. BATCHELDER: No, whether she stated this this statement to him.

MR. SLEPION: What statement?

MR. BATCHELDER: Ever said to her attorney as follows, and then I would ask the Court to take judicial notice of this.

THE COURT: Okay.

MR. SLEPION: We also have to go into the fact at the time this occurred I wasn't supplied at this point with any of the information of the records from the U.S. Attorney's Office until after these moving papers were put in and then when I was given the file by the U.S. Attorney I then conferred with my client relative to these things and at which time she then recalled various events which she is now testifying to.

These papers were put in prior to him giving me one piece of information about this case.

MR. BATCHELDER: Your Honor, these papers --

THE COURT: Go ahead.

MR. BATCHELDER: Your Honor, these papers were in August.

(In open court.)

CROSS EXAMINATION

BY MR. BATCHELDER (CONTINUED):

Q Miss Guardi, did you confer with your counsel in August with respect to these events?

A Of this year?

Q Yes.

A I spoke to him about why I was arrested after I was. I didn't know why I was.

Q Will you tell the Court roughly when that was, please?

A I don't know the --

MR. SLEPION: I think we have to fix a point in time.

MR. BATCHELDER: Yes.

Q Was it in July --

MR. SLEPION: In relation to our first conversation.

1 Q Was it in July when you were arrested?

2 A Yes.

3 Q It was? And you told him about what you  
4 have told us here, is that correct?

5 A Not then, no. I didn't know why I was  
6 arrested in July.

7 Q Did you subsequently ascertain why you were  
8 arrested?

9 A All they did -- they told me I sold drugs.

10 Q I see.

11 A And I told them I didn't remember selling  
12 drugs and I didn't know what it was about until he got  
13 the records.

14 Q And when was that, please, do you remember?

15 A About a month later.

16 Q About a month later? That would be  
17 somewhere around the middle of August, is that correct?

18 A I think so.

19 Q Did you ever tell your attorney at any time,  
20 "At the time of her arrest and now, defendant Guardi  
21 simply cannot remember those facts which would enable  
22 her to contribute to her own defense and which would  
23 institute valid fact-finding in a Court of Law."  
24  
25



A When can I remember selling cocaine when I never sold cocaine. I didn't know.

Q I see. You didn't know.

A No. I didn't know what was in that envelope.

Q Did you ever tell --

A I didn't know what was in the envelope.

Q Did you tell him about the threats that had been made to you?

A Not until I found out what it was about.

Q I see. And when did you find out about it, the middle of August?

A When he got the papers on me.

MR. BATCHELDER: Thank you. I have no further questions.

MR. SLEPION: May I enquire?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. SLEPION:

Q When you just said when I got the papers on you, you are referring to a file which was given to me by the U.S. Attorney sometime weeks after you were arrested?

A Yes, sir.

1  
2 Q And it was at that time that I was able  
3 to show you what the government says supposedly  
4 happened?

5 A Yes, sir.

6 Q And that when you were initially arrested,  
7 that all we knew about it was that you were charged  
8 with the sale of drugs?

9 A Yes.

10 MR. SLEPION: No further questions.

11 MR. BATCHELDER: I have no further questions  
12 of this witness, your Honor.

13 THE COURT: All right, the witness may step  
14 down.

15 (Witness excused.)

16 THE COURT: Is that the defendant's case?

17 MR. SLEPION: The defendant, your Honor, would  
18 wish to recall Mrs. Greenberg for the purposes of having  
19 her declared a hostile witness and for further questions  
20 relative to past criminal activities.

21 THE COURT: The motion is denied for the  
22 reasons stated previously.

23 MR. SLEPION: Exception.

24 With that, the defense rests.

25 MR. BATCHELDER: Your Honor, the government

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2 would call as its rebuttal witness, Detective Ernest  
3 Mahone.

4 MR. SLEPION: Your Honor, may we approach  
5 the bench and determine if the line of questioning --

6 THE COURT: No. We have had too much  
7 bench conference.

8 MR. SLEPION: I object at this time for  
9 a witness to --

10 THE COURT: Please do not make statements in  
11 front of the jury. I have repeatedly warned you about  
12 it.

13 MR. SLEPION: May I go up and make an  
14 objection for the record?

15 THE COURT: You have made it already.

16 MR. SLEPION: Not on Mahone.

17 THE COURT: That is different. You  
18 come up here then.

19 I must ask you to refrain from making  
20 statements before the jury.

21 (At the bench.)

22 MR. SLEPION: I object to Detective Mahone  
23 being called at this point as a rebuttal witness as he  
24 was a witness who testified on direct examination and  
25 I wish the U.S. Attorney to make his intentions known



as to how he fits under laws of evidence as a rebuttal witness the testimony that has now been given in the defense case.

MR. BATCHELDER: I would ask him two short questions, your Honor. The first one is, did he ever take a taste of the narcotics. She brought that out that he took a taste. That was not brought out in some of his testimony.

My second question, your Honor, would go to the effect whether the second package was wrapped in an envelope.

MR. SLEPION: But he testified on that, Judge.

THE COURT: No.

MR. SLEPION: I don't object to the first question, I think that is proper rebuttal.

I object to the second because that is not proper rebuttal. He testified one way and she testified another way.

THE COURT: You have a habit of just talking like that after you state your objection. Objection overruled.

MR. SLEPION: I think it is frustration.

THE COURT: No, it is objectionable and very

much so. Conduct yourself properly.

(In open court.)

ERNEST MAHONE, called in  
rebuttal by the government, having previously  
been duly sworn, testified further as  
follows:

THE CLERK: Mr. Mahone, you understand you  
are still under oath.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. BATCHELDER:

Q Detective Mahone, calling your attention  
to August 23, 1973, in the evening of that date, did  
you arrive at the Tatler Bar with the informant?

A Yes, sir, I did.

Q And how long was the informant in your  
presence before she entered the bar?

A Oh, about ten minutes.

Q Did the informant ever leave to go upstairs  
from your person?

A Not without me, no.

Q Did you have social drinks at the bar with  
Jovana Guardi prior to going up?

MR. SLEPION: Your Honor, I object.

THE COURT: Overruled.

MR. SLEPION: That is contrary to what we discussed. May I approach the bench?

THE COURT: Overruled. I will allow the witness to be called in rebuttal.

Please continue.

A Could you repeat the question, sir?

Q Did you have social drinks before going upstairs?

A Yes, sir, I did.

Q And one further question.

With respect to the exhibit which you purchased on September 11, 1973, could you tell me, was it wrapped in this envelope like this?

A It was not in this envelope, it was in the plastic envelope inside of the outer envelope.

Q And the outer envelope was what kind, please.

A Excuse me?

Q The outer envelope was this envelope here? (Indicating.)

A That's correct, sir.

MR. BATCHELDER: The government has no further questions of this witness, your Honor.

MR. SLEPION: I have, your Honor.



## CROSS EXAMINATION

BY MR. SLEPION:

Q Officer, isn't it a fact that in relation to September 11th that an envelope was given to you by my client which was a white envelope?

A No, sir.

MR. SLEPION: No further questions.

MR. BATCHELDER: One I forgot, your Honor.

Excuse me and I beg the Court's indulgence.

## REDIRECT EXAMINATION

BY MR. BATCHELDER:

Q Did you taste the narcotics on the evening of August the 23rd?

A No, I did not.

MR. BATCHELDER: No further questions.

## RE CROSS EXAMINATION

BY MR. SLEPION:

Q Officer, when you say that my client on the first transaction handed you an envelope, what did you do with the envelope?

A When she handed me the white envelope on August 23rd, I examined the white envelope --

Q What do you mean by that?

A I examined the contents of the white envelope

and inside the white envelope I found a plastic bag which contained a white powder.

Q What did you do at that point?

A I looked at it and I put it in my pocket.

Q Then what did you?

A I then attempted to give her \$800 U.S. currency serial numbers that had been previously recorded.

Q Right. You gave her the \$800, is that right?

A I didn't give it to her at that point.

Q When did you give it to her?

A She had me accompany her to the bathroom.

Q Yes. And before you left the Tatler, Officer, you gave her \$800?

A Yes, sir.

Q And you are saying at this point you never touched the white substance at all for your own knowledge to see what it was?

A I examined the contents of the envelope and found that it contained a white powder.

Q Yes. But then what did you do after you saw that it had white powder?

A I placed it in my pocket.

Q You just gave her \$800 for white powder at that point, is that right?

1  
2 A Yes, sir.

3 Q You didn't know if it was all sugar at that  
4 point, did you?

5 A No, sir, I cannot.

6 Q Isn't it a common practice to take a little  
7 part of a substance and just place a little particle  
8 of it on your tongue?

9 A No, sir, it is not.

10 Q Did you ever do that in any of your arrests?

11 A No, sir, I have never done that.

12 Q Did you then have anybody what is known as  
13 field test this?

14 A Yes, sir, I did.

15 Q What is a field test?

16 A A field test is you have a small vial with  
17 a certain chemical in it. If you have cocaine, when  
18 you place a small amount of the cocaine in this  
19 small vial it will turn a certain color, if it is  
20 cocaine. When I field tested this particular package,  
21 its contents of this particular package, it did turn  
22 that color and I assumed that I had cocaine.

23 Q When did you do this field test?

24 A After I left the bar and met with officer  
25 Shackett.



1 GTpa

Mahone-recross  
Lino-direct

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2 Q About how soon later?

3 A That was about ten minutes after I left the  
4 bar.

5 Q And so before then, before this field test,  
6 it is your testimony that you did not know whether or not  
7 you were getting sugar or whether you were getting any  
8 cocaine at all and you gave up \$800 of U.S. money?

9 A That's correct, sir.

10 MR. SLEPION: No further questions.

11 MR. BATCHELDER: No questions, your Honor.

12 THE COURT: You may step down.

13 (Witness excused.)

14 MR. BATCHELDER: The government calss  
15 as its last witness Gerald Lino.

16 G E R A L D L I N O , called as a  
17 witness in rebuttal by the government,  
18 having first been duly sworn, testified  
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. BATCHELDER:

22 Q Mr. Lino, can we have your occupation,  
23 please?

24 A Police officer.

25 Q And for how long, please?

A Four and a half years.

Q And what are your present duties?

A I'm assigned to New York Drug Enforcement Task Force.

THE COURT: Keep your voice up, please.

A I'm assigned to the New York Drug Enforcement Task Force.

Q And did there come a time in 1974 when you met the defendant Jovana Guardi?

A Yes.

Q And can you tell us when that was?

A It was on May 16, 1974.

Q And would you please tell the Court and jury the circumstances of that?

A It was inside the Call Back Bar. I was in there with Marsha and I was introduced to a female by the name of Doris King. We were all three in conversation.

Another female white came over to the conversation that was introduced to me as Jovana.

Q Do you recognize that person in the courtroom today?

A Yes, I do.

Q Would you please point her out?

1 GTPa

Lino-direct /cross

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2 A Sitting right there. (Indicating.)

3 Q Fine. What happened? What did she say to  
4 you and you say to her?

5 A Greetings were exchanged, naturally, and  
6 during the course of the conversation Miss Jovana had  
7 stated that she had the best stuff in town, that one blow  
8 would knock you on your ass.

9 MR. BATCHELDER: I have no further questions,  
10 your Honor.

11 MR. SLEPION: May I have a moment, your  
12 Honor? I have just been given something to look at.

13 (Pause.)

14 CROSS EXAMINATION

15 BY MR. SLEPION:

16 Q Do you know Marsha Greenberg?

17 A Yes.

18 Q Do you know she is an informer, registered  
19 informer?

20 A Yes.

21 Q How long have you known that?

22 A Since October of 1973.

23 Q Did Marsha introduce you as her nephew?

24 A That's correct.

25 Q That you were related to the Pratt family?

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1  
2 A That's correct.

3 Q Wasn't it Marsha who said she has the  
4 finest stuff in town?

5 A No.

6 Q That Marsha said she could get the finest  
7 stuff in town?

8 A No.

9 Q Do you know Marsha's son?

10 A No.

11 Q Do you know Frank Stewart?

12 A No.

13 MR. SLEPION: I have no further questions.

14 MR. BATCHELDER: No further questions.

15 THE COURT: All right.

16 (Witness excused.)

17 MR. BATCHELDER: The government rests.

18 THE COURT: Any other witnesses?

19 MR. SLEPION: I have rested, your Honor.

20 THE COURT: Both sides rest?

21 MR. BATCHELDER: Yes, your Honor.

22 THE COURT: Suppose you come up so I can get  
23 an idea of time.

24 (At the bench.)

25 THE COURT: How much time do you want to

1 GTPa

Lino-cross

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2 sum up?

3 MR. SLEPION: I never can really speak  
4 for more than an hour, if I ever can. I doubt if I will  
5 need more than an hour.

6 MR. BATCHELDER: 25 minutes.

7 MR. SLEPION: I will probably last, but --

8 THE COURT: Wouldn't 45 minutes be enough  
9 in a case of this type?

10 MR. SLEPION: I don't know, Judge.

11 (In open court.)

12 THE COURT: Members of the jury, we will take  
13 our luncheon recess now and I will ask you to please  
14 be inside so we can start at a quarter to two.

15 Again I will remind you that the case has  
16 not been concluded. Please do not discuss the case among  
17 yourselves, with any person or allow anybody to talk to  
18 you about the case.

19 When we resume the lawyers will sum up right  
20 after lunch.

21 Enjoy your lunch, all.

22 (Luncheon recess taken.)

23 \* \* \*

## AFTERNOON SESSION

1:45 P.M.

(In open court, jury present.)

THE COURT: All right proceed.

MR. SLEPION: Mr. Justice Weinfeld,  
Mrs. Martin, forelady of the jury, ladies and gentlemen  
of the jury, Mr. Batchelder.

It is now time to proceed in the trial of  
the case with what is known as summations, first by  
defense counsel and then by Mr. Batchelder.

As you recall in the opening statements about  
this case both by Mr. Batchelder and myself that when  
Mr. Batchelder opened to you he said that this was a  
simple case, but it was important, important to the federal  
government, important to everybody concerned.

I think that possibly in sporting events  
a one out of two batting average is pretty good, but  
not in a trial of a case.

This case is important, but I don't think  
it is simple. I don't think it is simple at all. And  
I think anytime you have a situation where an act is  
conceded as having been done, but what is in issue is  
the intent and motivation of the act, that that  
becomes more difficult than possibly determining an issue,



1  
2 did somebody do something or didn't they. I don't  
3 think it is simple at all.

4 And, of course, it has been testified to  
5 that this whole situation came about, if you will,  
6 the first cause, initial causation or first inception  
7 or any other words that you want to call it came about  
8 as a result of Marsha introducing my client to this  
9 detective for the purposes of a transfer of cocaine and  
10 there is no doubt -- I think that is conceded, certainly  
11 even by Marsha, by the police officers that testified,  
12 by everybody that has been here -- so that the initial  
13 causation here has to be laid at the foot, at the doorstep  
14 of the government for setting something in motion.  
15 That is conceded that they agree they did that.

16 Now, for whatever personal feelings we all  
17 may have about informers, I think that in order to give  
18 everybody a fair trial the concept of informers  
19 has to really be set aside or put in a proper prospective.

20 There is no doubt that there has been informers  
21 used throughout the whole history of the world. They  
22 were there before the last supper, they were there during  
23 the last supper and they will be there even after we  
24 have had supper. They will always be there, informers,  
25 for whatever particular reason or motivation they feel

1           GTpa  
2           necessary to protect themselves or their loved ones or  
3           whatever. There will always be informers.

4                   Further, informers are important people, what-  
5           ever we may think of the, whatever terms, whatever society  
6           calls the, stoolies, parrots or informers.

7                   We have heard some euphemism, "cooperating  
8           people." These are all euphemisms. They are informers.  
9           They sell out people for whatever reason they feel  
10          is necessary. But they are important, because in many  
11          instances you can't get to something without somebody giving  
12          up somebody else, and, unfortunately, the problems of  
13          drugs are very severe, nobody is ever going to deny that.  
14          The interest in stopping any drug trafficking is very  
15          severe, and so informers are used.

16                   Sometimes they are supposedly used as, oh,  
17          little fish to try to capture bigger fish, so  
18          to speak, or perhaps a real big person or a quantity of  
19          people making up what might be considered a big  
20          person, but in any event they are used.

21                   But there are certain rules about the use  
22          of informers that Judge Weinfeld will certainly talk to  
23          you about when he charges you at the end of this case.  
24          I think it would be sufficient to say that informers  
25          can be used, so to speak, by the government, whichever

1 it may be, federal, state or city, as a means, so to  
2 speak, of fighting fire with fire. You deal with people  
3 that you really don't have very much respect for to try  
4 to root out other people that you don't have very much  
5 respect for and hope in such a fashion to make a better  
6 system of law, a better system to protect society, so  
7 you fight fire with fire.  
8

9 But there has to be, and there is,  
10 certain rules about the way these informers are  
11 to go about conducting themselves. You can't start  
12 a fire and then come back in here as a fire fighter,  
13 you see, and then say, "Look what I have done."

14 The government started a fire.. They admit  
15 it. Marsha called my client to set up an appointment.

16 Now, of course, Marsha said she did that  
17 only one time. We will get into that only later.  
18 And my client certainly says it was a number of  
19 occasions threats and everything else that was used.  
20 But no doubt the fire was started by the federal  
21 government when there was no fire in existence before.

22 I will talk about Marsha for a while now.

23 I don't know what a woman won't do to help  
24 a son that she bore who was in trouble. Everybody has  
25 their own evaluation, their own moral code about that.



1  
2 When I first opened to you, you see, I was  
3 under the impression -- it turned out that I  
4 was possibly wrong and I say possibly because we still  
5 only have her word for it -- but I was under the  
6 impression that her son actually was arrested for  
7 extortion. It turns out that he wasn't even arrested  
8 for extortion, because whatever she has done has not only  
9 saved him from a possible conviction, but she is so good  
10 she even saved him from an arrest. That is pretty good.  
11 And she would have you all believe that no deal was  
12 made, nothing was promised, no quid pro quo,  
13 nothing was guaranteed, that she merely went ahead and  
14 set up -- oh, introduced, introduced a number of people  
15 to agents just because her son could possibly have been  
16 an accessory after the fact or before the fact or some  
17 other legal nonsense such as that but that he wasn't  
18 going to be arrested.

19 My God, what didn't she do? She slept with  
20 men and busted them, she had them set up. Frank  
21 Stewart, everybody else she could have tried to  
22 lay her hands on in one form or another she set up and  
23 she is going to have you believe that, well, nobody  
24 really said anything about what the outcome would be of  
25 her son's non-arrest, non-case if she continued to do

I think that is absolutely fantastic.  
this.

1  
2 Now, to be sure, a federal agent may possibly  
3 say, "Listen, Marsha, you know if you really just keep  
4 on busting people and setting them up for us, you  
5 know we are going to help you at the right time. We  
6 want your testimony down first and we want you to keep  
7 testifying and then after all that is done you will see  
8 how we produce. But if we tell you right now  
9 that your son will never be arrested or if Frank Stewart's  
10 case may be commuted in some way with the number of  
11 years that he got after this is all said and done about  
12 a year from now, it will be reduced, if we tell you that  
13 then you are going to come into trial here and then  
14 the lawyer is going to say was there a deal, so we can't  
15 tell you anything like that, but you know we are going  
16 to work something out."

17 Something like that had to have been said.  
18 I mean, she just doesn't go around and do all of these  
19 things, especially a woman who has been convicted herself.  
20 Which is another interesting issue, because she says she  
21 can't even remember how much money she has tricked  
22 people out of, stolen. At least \$60,000. She can't even  
23 remember it, that is how much money it has been, that's  
24 how long it has been going on. But her son comes first.  
25 I don't know.

1  
2 It really had to be something real important  
3 that her son was into for the amount of work that she  
4 did for how long she did it and who she took down the  
5 road with her. But we can't get that out of her,  
6 because as you saw on the witness stand she is really  
7 cool. Why shouldn't she be? She is what is -- in what  
8 is known as federal protective custody. Who knows where  
9 she is living? We don't even know the city. We don't  
10 even know where it is, but she is in custody, as she  
11 puts it.

12 She is being taken care of pretty good and  
13 there obviously had to be tremendous pressures placed  
14 upon her and her son and Mr. Stewart at one point or  
15 another. There is no way of really finding all of that  
16 out. That is the question you will all have in  
17 your own minds as to the relationship with Frank  
18 Stewart, as to the fact that he has been convicted of  
19 dealing drugs and that later on apparently it became  
20 even necessary to give him up, too, for the sake of  
21 Bruce, the offspring.

22 And, of course, you really don't know  
23 who you really talk to when you talk to her anyway  
24 because you don't know if you are speaking to Marsha  
25 Greenberg or Marion Ladd or Marsha Ladd and so many



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2 other names that she says she can't even remember how  
3 many other aliases she used, and there is a good reason  
4 why she used a number of aliases during her lifetime in  
5 terms of tricking people out of money. You can figure  
6 that out.

7 Now, you have heard that Marsha was  
8 convicted of crime. The extent of it has been  
9 precluded. She has been convicted of crime and that's  
10 all I can say about it. She has stolen over \$60,000, but  
11 that is all I am permitted to say about it. Okay. That's  
12 the way that is.

13 But it is interesting that the U.S. Attorney  
14 didn't call her as his witness, you see, that I had  
15 to call her when she is in an apartment somewhere directed  
16 by the government. But I had to call her as a witness.  
17 A defense witness? Really. Where am I going to find  
18 her? I can't even find out where she lives now when she  
19 is here. But this euphemism of being my witness  
20 because I had to call her during the defendant's case --  
21 she is not my witness.

22 We get on to Detective Mahone for a  
23 minute, because I don't want to forget him.

24 There is not really much I have to say about  
25 him because Marsha set that whole thing up. There is

1 not really much I have to say about any of the police  
2 officers in this particular case because this was all  
3 done by Marsha. But why it became important for  
4 Detective Mahone or Mahone -- I really don't know how  
5 he pronounces it -- to say he didn't taste the  
6 substance, I don't know. I can't figure that out. It  
7 is inconceivable to me that a federal agent would go  
8 around -- and he has been an agent for awhile -- and  
9 give people \$800 for this or \$850 for that and just  
10 walk out and he doesn't taste it, you know, a little on  
11 his tongue, you know, it's not sugar, it's not saccharin,  
12 perhaps it's something else.

13 I don't understand that part of it. Certainly  
14 it won't inure to the benefit of my client when  
15 she got on the stand to tell you he did that because  
16 then he is, in fact, saying, well, what he is tasting  
17 appeared to be something that he recognized in the past  
18 as being cocaine. It doesn't help her to say that, but  
19 that is what happened so she told it to you. Why he is  
20 so nervous up there, unless he is afraid you are going  
21 to think he is walking around tasting cocaine every time  
22 he makes a buy and he is really, I don't know. But for  
23 some reason that became important and it is a matter of  
24 curiosity to me more than anything else. I don't think  
25

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2 it is of a great issue you are thinking. Maybe  
3 you will. You control. If you do, I don't know  
4 what it is about it.

5 As I opened to you and I told you that it is  
6 the defense's contention here that there are really  
7 two main legal issues and that the issues are duress,  
8 that is the forcible coercion, and entrapment. That  
9 is still the same.

10 Now, as I said before about there being certain  
11 rules in the use of informers and you can't fight a  
12 fire when there is no fire, you can't create a fire,  
13 the laws relative to entrapment and duress will be  
14 given to you by Mr. Justice Weinfeld.

15 I think that it is sufficient to say  
16 that there are certain key words that are important and  
17 that revolve around the issue of guilt or innocence and  
18 some of those key words are predisposition -- that is  
19 one of the big words-- propensity, that is another  
20 one, and that in the terms of entrapment it would  
21 appear that if an official of the government, which  
22 is the agents certainly and Marsha, who isn't just a  
23 casual friend of the government -- she has a number,  
24 although she didn't know it, she is registered, she is  
25 an agent of an agent, she is an agent of the

government --that if an official of the government acts

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1 directly or through an agent and he induces an otherwise  
2 unwilling person to commit an unlawful act and that that  
3 person would not have committed the act but for this  
4 inducement, then that person is not criminally responsible  
5 for the act.  
6

7 Now, what does all that mean? Well, it means  
8 that if a person is not predisposed to commit an act  
9 and that an agent of the government gets that person to  
10 do it, that they are not criminally responsible for it.

11 I think at the time the Judge charges you  
12 he will certainly talk all about that, but it is going  
13 to be for you to determine the facts as you see  
14 them based upon the law as it is given to you  
15 and you are going to have to determine whether or not  
16 my client was predisposed or had a propensity to commit  
17 an act or whether the federal government merely  
18 provided a favorable opportunity for her to commit an  
19 act, because, you see, if the government only provides  
20 a favorable opportunity for somebody to commit an act  
21 that means that they are already predisposed and have  
22 the propensity to commit it and then that kind of set  
23 up is okay under the laws of entrapment. That is okay,  
24 you can do that. But you can't do it if a person  
25 is not predisposed to commit an act.

I could talk more about entrapment, but I will probably run the risk of going over into the Judge's prerogative and I don't want to do that. I think that that really sums up to a great extent basically what entrapment is all about. It is the kind of person you are dealing with and what their motivations are and the kind of a person that you introduce to an agent.

However, in trying to figure this out you are entitled, certainly, to go into the entire record and reference of what occurred here, and my client has no prior record. You know she has never been convicted of a crime. Now, that is pretty important when you try to figure out propensity, when you try to figure out predisposition to doing a certain act, because she has never been convicted of a crime.

She comes in here presumed to be innocent and the burden of proving guilt beyond a reasonable doubt, if it can be done, rests solely with Mr. Batchelder.

So how do you decide if a person is predisposed to commit a crime when they have never been convicted of committing a crime? You can always argue, well, there always has to be a first time and that is how

1 people eventually get criminal records. There is a  
2 first time and a second time and a third time so how do  
3 you decide that?  
4

5 Well, I don't know. I don't know the answer  
6 to that. All I know is you have a 32 year old woman  
7 here who managed to go 32 years without a prior criminal  
8 record, never been convicted and who, after being  
9 introduced or set up by Marsha on two occasions has never  
10 been convicted for a crime after that, and there  
11 is just nowhere that she has been convicted of a crime.

12 That is one area, entrapment.

13 Another area is duress, which I had talked  
14 to you about when I opened to you.

15 Basically, duress says that if an accused  
16 did not commit an act, a criminal act voluntarily or  
17 wilfully but as a result of coercion exerted upon her,  
18 she is not criminally responsible for the act, that  
19 coercion will excuse the commission of a criminal  
20 act if that coercion induced in the defendant's mind,  
21 in Miss Guardi's mind, an apprehension of death or  
22 serious bodily injury.

23 Well, I'm sure the Judge will have a lot  
24 more to say to you about duress than that, but that in  
25 a capsule form is about it on duress. If you threaten



1  
2 somebody and if -- you see, it is not just the thing  
3 of threatening somebody, because you can threaten somebody  
4 and that person can believe that you just don't have  
5 the wherewithal or the means or the propensity to  
6 carry the act out and then in your own mind you are  
7 never really afraid of that person because you know they  
8 will never do anything to you so it is not merely the  
9 statements that are made to you but it is what happens  
10 within your own head when a person threatens you.

11 Well, Marsha's threats were not taken  
12 lightly by my client and continued over a period of  
13 time, finally to the point of a gun being  
14 displayed, of people coming into the bar and of my client  
15 finally reaching that point in her own mind that to get  
16 out of this whole thing she would do it, she would  
17 transfer the envelope.

18 Now, I am not suggesting to you that all of  
19 these other people that Marsha got involved with are on  
20 a similar situation. I am not suggesting to you that  
21 those people did or did not have prior criminal  
22 records, were or were not drug pushers of any kind. I  
23 am not talking about them. I am talking about the extent  
24 to which Marsha has gone. We are talking about one  
25 person here right now and that is Jovana Guardi, this

1 woman right here, with no prior record. That is who  
2 we are talking about, who finally did it.  
3

4 And when did she do it? September of  
5 1973 and August of 1973.

6 She was on the witness stand. The  
7 Assistant U.S. Attorney cross examined her. There was  
8 no criminal record for being convicted of anything or you  
9 would have heard about it, and that's over a year ago.

10 We are really surprised and I was surprised  
11 at one point. I was surprised when that last witness,  
12 the so-called rebuttal witness came on the stand, that  
13 one-line testimony, that 11th hour kind of thing, "Yes".  
14 Where was that witness before? Why did it come in then  
15 for, just that last line by a police officer and,  
16 "Yes, I overheard at a certain point in time your client  
17 say that she had the finest stuff."

18 How convenient. What do you do with some-  
19 thing like that?

20 Well, did he make a buy from her? Did he  
21 make a buy from her? Did he set her up? Did she make  
22 any more sales? Did anything ever happen in relation  
23 to criminal conduct of my client except on those two  
24 occasions there? Where was it? It was nowhere.

25 Why didn't the good officer who comes in at

1  
2 the last minute say that, well, he tried to make  
3 a set up or something. There is none of that.  
4 He just comes on the witness stand and he says, "Yeah,  
5 I overheard your client tell Marsha she had good  
6 stuff or the finest stuff."

7 It is scary, when things like that happen  
8 when they just come in and no way to prevent them from  
9 coming in, either.

10 Marsha sat up there in all the cool  
11 confidence of the person who has the protection and the  
12 ear of the federal government and she has that ear and  
13 that protection because she has done her job and she has  
14 to produce and she has to produce her job here in Court  
15 as well. The job doesn't end merely by having somebody  
16 arrested, you have to come in and testify as well. So  
17 when I ask her about lesbian activities and she says  
18 no, but you know she has been convicted of crime, you  
19 know she has done time in jail but you don't know how long  
20 she has spent in a women's prison, okay, she is not going  
21 to say, "Yes, I solicited your client for lesbian  
22 purposes and then when I was rebuked by her I decided  
23 she was fair game to set up, also."

24 She has to come forth straight with it,  
25 she has to keep the role. because once these cases, this



1 case is over, anyway, and whatever happens, then  
2 there is going to be an end to the problems with her  
3 son. There will be -- maybe they will tear up a  
4 card that they have on him or something will get  
5 misplaced or destroyed that has kept this woman from  
6 doing with men she slept, people she has known,  
7 for friends, for everybody in the world to say, "Brucie,  
8 it doesn't matter who gets buried, as long as Brucie  
9 doesn't get a conviction, good old Brucie," and  
10 possibly whatever happens to Frank Stewart in a year  
11 from now.

13 You know, sentences change. They get  
14 reduced, they don't always stay the same. Because  
15 you got seven to ten two months ago doesn't mean in  
16 1975 an agent doesn't come in for a case and for  
17 reasonable and good cause shown this witness blah,  
18 blah, blah, three to five. Oh, whole years are just  
19 chopped off. We don't know if that is going to  
20 happen and I can't tell you it is going to  
21 happen, because everything I say here to you is not  
22 even evidence, it is something for you to think about.  
23 It is not evidence what Mr. Batchelder says, either.

24 But something more than merely not  
25 allowing Brucie to have a criminal record, which she has

1 a criminal record, something else is going on here. It  
2 doesn't fit. It doesn't add up.

3  
4 What does add up is that woman had to produce  
5 and she had to produce in a mass scale for whatever is  
6 really underground in her life, in her family, in her  
7 relationships, whatever it really is. And if she  
8 couldn't do it one way she would do it another way, whether  
9 she picked on people that did have criminal records which  
10 were easy or whether she had to convince, cajole, threaten,  
11 in some way set up somebody with no prior record just to  
12 keep the ball rolling to come back to the agents and say,  
13 "See what a good little informer I am, here is another  
14 one," and just trail these people around as long as she  
15 possibly could.

16 They can't do this if you, in your own mind,  
17 say, "This is blatantly unfair. You can't take somebody  
18 who has been working for 12 years as a barmaid, many  
19 hours a night, never been convicted of a crime, you  
20 can't do this to them. You can't do it to them if you  
21 threaten them under duress and you can't do it to them  
22 if you entrap them for any other kind of reward. That is  
23 not the way the game is played."

24 You have the power to stop it. The Supreme  
25 Court of the United States has ruled it can be stopped under

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2 those grounds, this Judge will charge you it can be  
3 stopped under those grounds and the power to stop  
4 it rests with you.

5 There are questions that I was asking that  
6 I was stopped, questions that the U.S. Attorney asked  
7 that he stopped on. There are doubts, I think, when  
8 you have questions that remain unanswered. Those  
9 doubts may pile up, and I hope they do in your mind, to  
10 what is known as a reasonable doubt.

11 It is a burden upon Mr. Batchelder to prove  
12 guilt beyond a reasonable doubt, and in this case that  
13 means he has to prove to you beyond a reasonable doubt  
14 that there was a fire. He has to prove to you that  
15 the government did not merely provide a favorable  
16 opportunity for my client to commit a crime. He has to  
17 prove that to you beyond a reasonable doubt. He has to  
18 prove that my client had a propensity or a predisposition  
19 for a criminal activity in this case and he has to prove  
20 that to you beyond a reasonable doubt. And he has to  
21 prove to you beyond a reasonable doubt that Marsha did  
22 not threaten or cause other people as well to threaten  
23 my client to commit this act.

24 Those are his burdens, because my client  
25 stands here presumed innocent of any wrongdoing at all,



with a clean record.

I hope that when you go into that jury room and 12 minds are always better than one, and you probably see things in this case that I don't or that the U.S. Attorney doesn't, that when you go in there you will discuss all of that and see what you are going to do about a 32 year old woman with no prior criminal record who was set up by the federal government and see what you think about all that.

I thank you very much for listening to me.

MR. BATCHELDER: Judge Weinfeld, Mrs. Martin, ladies and gentlemen of the jury, Mr. Slepion.

Before I get into my summation, I would like to thank you very much for your attention during the course of this trial. You have listened very attentively to the evidence as it has come in and you have listened very attentively to the summation that you just heard. It was an excellent summation, asking you to draw certain inferences by a well-schooled attorney.

Ladies and gentlemen, when we started this case I told you the evidence would come from that chair; not from anything I say but only from that chair. His Honor will instruct you that nothing I say

1  
2 is evidence, and I would like to review just briefly  
3 with you the evidence as it came from that chair.

4 I cannot predict the future. I don't have  
5 a crystal ball which Mr. Slepion has which says this will  
6 happen or this didn't happen because I wasn't there.  
7 I am bound by what happened from that chair, from the  
8 people who were produced and testified from that  
9 chair.

10 There have been several defenses raised here  
11 and several appeals to you. One, a very valid appeal.  
12 This person is 32 years old with no prior criminal  
13 record, the defense of entrapment, the defense of duress.

14 But there has not been one appeal to your  
15 God-given common sense. And I submit to you, ladies  
16 and gentlemen, you did not park your God-given  
17 common sense outside the door when you came in here,  
18 the kind of stuff you use in your everyday life, the  
19 kind of stuff you act on. And no matter how learned the  
20 treatise on duress and no matter how learned  
21 and convoluted the treatise on entrapment, I am asking  
22 you to apply your common sense to the evidence that  
23 came from that chair.

24 Ladies and gentlemen, the defense of  
25 coercion and the defense of entrapment is somewhat like

1 a seduction scene which at the time of the consummation  
2 you beat the person over the head with a stick.

3 If you were entrapped into doing something,  
4 then how can you conceivably be coerced into it  
5 by having somebody beat you over the head? I will  
6 leave that philosophical distinction to this gentleman.  
7 I don't understand it.

8 Let us take a look at the events of 8/23  
9 which led, the government states, to this purchase.

10 The defendant is charged with two  
11 distributions.

12 I once had a college law professor and he  
13 told me that whenever I was in trouble with the facts,  
14 argue the law and whenever I was in trouble with the law,  
15 argue the facts.

16 The facts from this chair are that on  
17 8/23 Detective Mahone, with the confidential informant,  
18 went to the Tatler Bar, sat down and had drinks at the  
19 bar, was seen going into the bar by Special Agent  
20 Keefe. The confidential informant and Detective Mahone  
21 were seen going into the bar, were seen in the bar by  
22 Detective Murphy, were seen by Detective Murphy and Ernest  
23 Mahone to go upstairs, to return a short time later and  
24 they were seen to depart.



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2 Now, ladies and gentlemen, whatever you  
3 think and whatever I think of Marion Ladd, the  
4 government has to take its witnesses where it finds them.

5 If you can produce witnesses who can engage  
6 in undercover narcotics activities that are a  
7 priest, penitent or anyone else, we are interested.  
8 We are interested. And it is as Mr. Slepion says, the  
9 narcotics business is not a nice business. There is  
10 a little bit of secrecy involved in this business,  
11 and I don't profess to know everything about this  
12 business.

13 What happened, what happened on that occasion?

14 The defense tells you, through Miss Guardi,  
15 that the informant arrived first. Detective Mahone  
16 tells you the informant was with him for an hour prior  
17 to going there.

18 Detective Murphy and Detective Mahone  
19 both say that they had drinks at the bar with the  
20 defendant and that they both departed, that  
21 Detective Mahone and the informant went upstairs.  
22 Miss Guardi tells you that the informant arrived there  
23 before, went upstairs, put some narcotics or put  
24 something that she did not know what it was in a package,  
25 after having placed it there before, and then she simply

1  
2 turned the cocaine over in the presence -- the package  
3 over in the presence of J.C. Easterling, who just happened  
4 to be at the bar.

5 Detective Murphy, while at the bar, which  
6 is conceded is not the Copa Cabana, said he saw a package  
7 change hands.

8 Ladies and gentlemen, from that witness stand  
9 your common sense, what the defense asks you to believe  
10 is that a sophisticated 32 year old woman took a package  
11 in equally sophisticated New York, took \$800 for it, did  
12 it as a favor for someone who was threatening her, for  
13 what reason we don't know, and never, ever looked inside  
14 that package or never, ever knew anything about  
15 narcotics trafficking in New York City.

16 Now, ladies and gentlemen, I ask you,  
17 does that appeal to your common sense?

18 This, ladies and gentlemen, within a context  
19 where the defendant stated to her attorney, "At the  
20 time of her arrest now, defendant Guardi simply cannot  
21 remember those facts which would enable her to contribute  
22 to her own defense and which would institute valid  
23 fact-finding in a Court of Law."

24 Ladies and gentlemen, how many times have  
25 you been threatened, if ever, with having your legs

1 broken, with having lye thrown in your face, with  
2 delivering a package and receiving \$800 for it and not  
3 have some idea what is going on?  
4

5 At no time did this defendant ever tell  
6 police officers, federal officers, the U.S. Attorney  
7 who interviewed her of any one of those threats until  
8 this day.

9 I cannot tell you whether those threats  
10 took place. I am bound by what that witness says.

11 We heard one bit of information. In the  
12 opening Mr. Slepion promised to tell us that the  
13 defendant's record was clean. That he did. He also  
14 promised to tell us that all this was done for the  
15 extortion, the extortion -- you remember -- it was done  
16 for the son, the extortion. Ladies and gentlemen, there  
17 is no testimony about any extortion. It may exist in  
18 his mind, but it surely doesn't exist in this chair.

19 About reduction of sentences. Remember  
20 how Frank Stewart was romantically involved in the  
21 opening. You remember how it was all done for Frank  
22 Stewart.

23 Frank Stewart has been indicted in this Court  
24 and is going to stand trial in about a month. Some deal  
25 for Frank Stewart.



1  
2 That is another thing we were promised that  
3 was never delivered on.

4 Ladies and gentlemen, I don't know much  
5 about this because I am getting old, crew cut and  
6 everything else, but I put predisposition to commit a  
7 crime to something like this, and I will defer to my  
8 younger gentleman in the back.

9 If I go to a bar and I buy a girl a drink and  
10 it is on my mind something else, that if I buy her  
11 three more drinks and she takes me up on it, you  
12 might call it entrapment, then you might call it  
13 seduction, you might call it anything else. But if I  
14 go to a place and I say, "I want to buy an ounce of  
15 cocaine," isn't that a little different? Isn't that  
16 a little different? I want to buy an ounce of cocaine  
17 for \$800.

18 "Well, just wait, we'll run upstairs and  
19 get it." This by a woman that is threatening this  
20 other woman, and we have not one shred of evidence to  
21 indicate why a sale to a third party with cocaine that  
22 she delivered would somehow help out Frank Stewart,  
23 who hadn't even been indicted.

24 If you can make sense out of that,  
25 please do, because that is the defendant's position; no

more, no less.

"I must sell to Mahone to help out Frank, who hasn't even been indicted."

Why did I bring the officer back with respect to a taste?

This defendant stated he took a taste. I wanted to find out whether he did. He said no. He contradicts.

There are three witnesses that contradict everything the defendant says -- in fact, there are four -- everything the defendant says with respect to Exhibit 1: Keefe with respect to them going into the building, the informant and the officer; the officer with respect to going into the building with the informant; Detective Murphy as to what happened in the building; Keefe as to what happened going out; and Marion Greenberg as to what happened in there. There are four glaring inconsistencies, if you will, in the defendant's story.

Let us go to September 11th. At this point Detective Mahone makes a phonecall.

Now, the defense is a bit more hard-pressed here, but consequently says that the narcotics was then delivered prior to the deal by the informant.

1           The informant denies that. Mahone  
2  
3       stated he called her up, didn't get anything, said,  
4       "I'll be around the next day," continue with Guardi's  
5       statement to him on the first occasion, "If you want to  
6       get a hold of me, call me up a day before and I'll  
7       have the cocaine on the next day."

8           That is just what he did. Common sense?

9           On the 11th he appears alone without the  
10       threatening witness, without the nefarious informant;  
11       nowhere around. Never even talked to her. Never talked to her

12           Bing, bang, here is \$800, I only got  
13       \$800, \$850, I'm doing this deal for -- we never did find  
14       out who this deal was being done for.

15           Ladies and gentlemen, Detective Mahone  
16       testified that Government's Exhibit 1 was wrapped in a  
17       New York Bank for Savings envelope and it was inside  
18       that.

19           He testified that Government's Exhibit 2 was  
20       taken from the bosom of the defendant by the defendant.  
21       It is in a clear plastic bag.

22           We heard a lot about a white envelope and  
23       everything else. No white envelope, a clear plastic  
24       bag taken from the bosom of a woman, and, "I don't  
25       know what it is in New York City in 1974 and I have



1  
2 been in the midtown east side bar area for 12 years and  
3 I have no idea what it is and what I am getting the  
4 money for."

5 Ladies and gentlemen, you would not get  
6 on the subwaytrain and get off alive if you followed  
7 that line of logic. This is New York, not Topeka,  
8 Kansas.

9 Let us go back to what the detective told you  
10 she said, this woman who doesn't know anything about  
11 cocaine. I can't tell you, that is something you have  
12 to judge, because I can't get in a person's mind. You  
13 will just have to look at the facts and see whether  
14 maybe it might have come to you that something was amiss  
15 here, something was a little bit amiss.

16 "Do you want street stuff or do you want  
17 it whacked or do you want a one cut?"  
18 Incident number one.

19 Incident number two, "What do you cut it  
20 with?"

21 "Well, I cut it with lactose."

22 Her testimony was, "I don't really know what  
23 you cut it with, I don't know anything about it, but  
24 I hear around that it is lactose. I hear around  
25 that it's lactose."

1  
2 Lo and behold, what does it turn out to be  
3 cut with? Lactose. And what does it appear to be cut  
4 with on both occasions but lactose. "But I don't  
5 know anything about cocaine and I don't know what  
6 it was I was taking out of my bosom and what I was  
7 getting the \$800 I got because I was doing it for a nefario  
8 informant that was threatening me, who I never told  
9 anybody about these threats."

10 Why did I bring, why did the government call  
11 that last witness?

12 There was testimony, if you listened carefully-  
13 and I think this is my recollection, -- that the  
14 defendant stated she never had any connection  
15 with Marion Ladd subsequent to November of 1973 at a  
16 Thanksgiving Day party. I believe it went something  
17 like that.

18 Ladies and gentlemen, on May 16th, an  
19 independent agent arrives and tells you that he was  
20 introduced by Marion Ladd to the defendant, at which  
21 time the defendant said, "I have got cocaine that will  
22 knock you on your ass."

23 Now, if that offends anybody's sensibilities,  
24 that's the way the testimony came from that chair.

25 Does that witness, was she telling the truth

1 when she said she never saw anyone subsequent to November  
2 27th? Was she telling you the truth when she stated  
3 she knew nothing about cocaine? These are assessments  
4 for you.  
5

6 Ladies and gentlemen, you have had one  
7 appeal to your sympathy. I am going to appeal to the oath  
8 that you took , and that is to decide this case solely  
9 on the evidence and on nothing else, and that is an oath  
10 you all took. You all took the oath that this case would  
11 be decided solely on what came from that chair, and  
12 that's all I am going to ask you.

13 I am not unsympathetic to what it takes to  
14 convict a defendant. But I'm also, and the government  
15 submits to you, that oath is binding also and that oath  
16 is your conscience as to what you stated you would do  
17 with the evidence in this case.

18 Ladies and gentlemen, there is an old  
19 Spanish saying that I think is applicable in this  
20 case, and that is he who goes by boat should  
21 expect to get wet.

22 The defense is, among others, the defendant  
23 did not know what she was doing with respect to what she  
24 was dispensing, and if she did, if she did she was  
25 coerced into this.



There is a Jesuit saying that is if there is no God, but if there is a God he is green and he is in this room. That is the same type of reasoning. I know he is green.

I don't know what it is, but if I did it I was coerced into it, and I never told a soul about it. In sophisticated New York.

Ladies and gentlemen, the government only asks you to hold this defendant responsible for her actions, nothing more. The defense, of course, does not.

Thank you.

THE COURT: Members of the jury, we will take a short recess before I instruct you.

Again let me remind you the case has not been submitted to you finally, so please do not discuss the case, consider it among yourselves or have any discussion about it until I call you back.

(Recess.)

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(In open court, jury present.)

THE CLERK: This Court is about to charge the jury. All spectators desiring to leave may do so now. Those electing to remain must remain seated until its completion.

1                   Mr. Marshal, would you lock the door,  
2  
3                   please.

4                   THE COURT: Members of the jury: We are now  
5                   at the stage of the trial where you will soon undertake  
6                   your final function as jurors and here you perform one  
7                   of the most sacred obligations of citizenship, that is,  
8                   acting as ministers of justice.

9                   You are to discharge this final duty in  
10                  a complete attitude of fairness and impartiality and,  
11                  as was mentioned by me at the time of your selection as  
12                  jurors, without bias or prejudice with respect to either  
13                  the government or the defendant as parties to this  
14                  litigation.

15                  Let me add, the fact that the prosecution  
16                  is brought in the name of the government, the  
17                  United States of America, entitles it to no greater  
18                  consideration than that accorded to any other party  
19                  to a controversy. By the same token, it is entitled  
20                  to no less consideration.

21                  All parties, government, corporations  
22                  and individuals alike, stand as equals at the bar of  
23                  justice.

24                  Your final role is to decide and pass upon  
25                  the disputed fact issues in the case. You, the members

1 of the jury, as I told you at the time of your  
2 selection the other day or yesterday are the sole and  
3 exclusive judges of the fact. You pass upon the  
4 weight of the evidence, you determine the credibility  
5 of witnesses, you resolve such differences as there may  
6 be in testimony and you draw whatever reasonable  
7 inferences may be warranted from the facts as you determine  
8 them.  
9

10 I shall later tell you how you determine the  
11 credibility of witnesses.

12 My final function is to instruct you as  
13 to the law. It is your duty to accept these  
14 instructions of the law and to apply them to the  
15 facts as you may determine them.

16 With respect to any fact matter, it is  
17 your recollection and yours alone that governs. As  
18 I have already told you, anything that counsel for either  
19 the government or the defense may have said with respect  
20 to matters in evidence, that is fact matters, whether  
21 during the trial, included in a question, set forth in  
22 argument or in summation is not to be taken in  
23 substitution for your own independent recollection.

24 So, too, anything the Court may have said  
25 during the progress of the trial with respect to a fact



1 matter, although I don't recall that I did say anything  
2 with respect to such matters, or may say during the  
3 course of these instructions in no respect is to be taken  
4 in place of your own independent recollection.  
5

6 Before we consider the precise charges  
7 against the defendant on trial some preliminary matters  
8 should be noted.

9 The indictment as returned by the  
10 Grand Jury, named the defendant Jovana Guardi and  
11 one J.C. Easterling as defendants. I think you  
12 heard his name mentioned during the trial. Only  
13 Jovana Guardi is on trial before you.

14 As to J.C. Easterling, the indictment has been  
15 severed or separated. You are not to be concerned  
16 with the reason for the severance, nor is that fact to  
17 enter into your deliberations. You are concerned only  
18 with the guilt or innocence of Jovana Guardi.

19 There are certain principles of law which  
20 apply in every criminal case and to which I made  
21 reference and emphasized at the time of your selection  
22 as jurors and I repeat these.

23 The indictment is merely an accusation or a  
24 charge, it is no proof or evidence of the defendant's  
25 guilt. No weight whatsoever is to be given to the fact

1  
2 that a Grand Jury returned an indictment making the  
3 accusations contained under the counts.

4 The defendant has pleaded not guilty.  
5 Thus, the government has the burden of proving the  
6 charges against her beyond a reasonable doubt.

7 The defendant does not have to prove her  
8 innocence. On the contrary, she is presumed to be  
9 innocent of the charges contained in the indictment.  
10 This presumption of innocence was in her favor at the  
11 start of the trial, continued throughout the trial, is in  
12 her favor as I instruct you now and continues in her  
13 favor during the course of your deliberations in the  
14 jury room. It is removed only if and when the  
15 government has sustained its burden of proof, that is  
16 proving the charges beyond a reasonable doubt.

17 The question that naturally comes up, then,  
18 is, what is a reasonable doubt?

19 The words almost define themselves. That  
20 there is a doubt founded in reason and arising out of  
21 the evidence in the case or the lack of evidence. It is  
22 a doubt which a reasonable person has after carefully  
23 weighing all the evidence. It is a doubt which appeals  
24 to your reason, your common sense, your judgment and  
25 experience.

1  
2 It is not caprice, whim or speculation, it  
3 is not an excuse to avoid the performance of an  
4 unpleasant duty. It is not sympathy for a defendant.

5 If, after a fair and impartial consideration  
6 of all the evidence, you can, candidly and honestly, say  
7 you are not satisfied of the guilt of the defendant,  
8 that you do not have an abiding conviction of the  
9 defendant's guilt which amounts to a moral certainty,  
10 then you have a reasonable doubt and in that  
11 circumstance it would be your duty to acquit. In other  
12 words, if you have such a doubt as would cause you as  
13 prudent persons to hesitate before acting in matters of  
14 importance to yourselves, that would be a reasonable  
15 doubt.

16 On the other hand, if, after such a fair and  
17 impartial consideration of all the evidence you  
18 can, candidly and honestly, say you do have an abiding  
19 conviction of the defendant's guilt which amounts to  
20 a moral certainty, such a conviction as you would be  
21 willing to act upon in important and weighty matters  
22 pertaining to the affairs of your own lives, then you  
23 do not have a reasonable doubt and in that circumstance  
24 it would be your duty to convict.

25 One final word on this subject. Reasonable



doubt does not mean a positive certainty or beyond all possible doubt. If that were the rule, few persons, however guilty they might be, would be convicted. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which, by its nature, does not lend itself to proof by mathematical certainty.

In consequence, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

Now let us turn to the charges.

The Drug Abuse Prevention and Control Act which the defendant is charged with violating was enacted by Congress in an effort to combat the illegal importation, distribution, possession and improper use of narcotic drugs which have had a substantial and detrimental effect on the health and general welfare of the American people.

In pertinent part this drug act provides, "It shall be unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute a controlled substance."

Under another section of the law, cocaine hydrochloride is a controlled substance.

We turn to the indictment itself. This charges that on or about the 23rd day of August, 1973, in the Southern District of New York -- and 57th Street and Third Avenue, the premsis referred to during the trial, is within the Southern District -- Jovana Guardi, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a scheduale two narcotic drug controlled substance, to wit, approximately 31.96 grams of cocaine hydrochloride, and the second charge is in similar language except it refers to the date of September 11th.

In order to find the defendant guilty of the charges contained in each count of the indictment the government must establish beyond a reasonable doubt the following essential elements:

One, that on or about the date stated in the count the defendant did distribute or possess with intent to distribute a narcotic controlled substance, in this case cocaine hydrochloride.

You will note under the statute the terms "distribute" or "possess with intent to distribute" are stated in the disjunctive, that is alternatively.

The government here charges there was a distribution of cocaine on the occasion referred to in

2 each count when it alleges the defendant made  
3 a sale to Detective Ernest Mahone, an undercover agent.

4 The next element is that the defendant  
5 distributed the narcotic drug intentionally  
6 and knowingly. This means that the defendant knew what  
7 she was doing, that her participation in the illicit  
8 transaction was deliberate and intentional, that it was  
9 not due to some mistake, inadvertence, carelessness or  
10 other innocent reason.

11 Of course, it is not necessary that the  
12 defendant knew she was violating a specific law. It is  
13 sufficient as to this element, if you are convinced  
14 beyond a reasonable doubt, that she was aware of the  
15 general unlawful nature of the act.

16 The next, and third essential element is that  
17 the substance contained in the government's exhibits, the  
18 subject of the two alleged purchases by the undercover  
19 agent, is, in fact, cocaine hydrochloride, a narcotic  
20 controlled substance.

21 A chemist testified to the substance of  
22 what Undercover Agent Mahone said he had purchased from  
23 the defendant--that its contents were cocaine hydrochloride.

24 Since the distribution of a narcotic  
25 controlled substance is an essential element of the crime



1 charged you must be satisfied beyond a reasonable  
2 doubt as to this element.

3  
4 Against that background of the essential  
5 elements required to sustain a conviction, let us  
6 consider the testimony with respect to the charges.

7 There does not appear to be much dispute  
8 that the transactions referred to in the indictment  
9 took place. The defendant, in testifying, did not deny  
10 the transactions occurred, but contends she is not  
11 criminally liable therefore because they were not  
12 committed voluntarily or with intent to violate the law.

13 She contends that, one, she was coerced  
14 into committing the acts and, two, that she was  
15 entrapped into so doing.

16 Let us consider these separately since they  
17 involve different concepts of law and are governed by  
18 different principles of law, although the defendant in  
19 some measure relies upon the same factual situation to  
20 support these defenses, either one of which, if not  
21 overcome by the government's proof, would be sufficient  
22 to relieve her of criminal responsibility.

23 First, as to duress or coercion.

24 Advanced as a defense to a crime, coercion  
25 means some unavoidable circumstance, condition or fact

1 which leaves a person no choice of action except at  
2 risk of his life or personal injury. It means that a  
3 person committed the acts because he or she was coerced  
4 to do so by the use of force or a threat to use force  
5 which resulted in a well-grounded apprehension that unless  
6 the person committed the acts it would result in his  
7 death or serious bodily injury. The apprehension of  
8 such injury must be real and not fancied.  
9

10 One who has full opportunity to avoid the  
11 act without danger of injury or death cannot invoke  
12 the defense of coercion.  
13

14 In substance, the defendant testified that  
15 over a period of time preceding the date of the first  
16 charge of the first count she was threatened in  
17 various ways by the informant Marion Greenberg,  
18 referred to as Marsha, and others allegedly acting on  
19 behalf of Marsha and that a day before she received  
20 similar threats. She also testified that threats were  
21 made thereafter and up to and immediately before the  
22 date of the second transaction.  
23

24 Mrs. Greenberg denied all these charges  
25 of threats or misconduct of any kind with respect to the  
defendant.

If you find upon all the evidence that, in

1 fact, defendant entered into the transactions in  
2 question not of her own free will but that she was  
3 coerced by reason of the threats, then you will find  
4 her not guilty and proceed no further.  
5

6 Even if you should find that the acts were  
7 not committed as a result of coercion, the defendant  
8 seeks to avoid conviction upon the ground that the  
9 transactions were induced by government employees. In  
10 short, this is what you have heard referred to as  
11 the defense of entrapment. Now, let us consider this  
12 plea.

13 Law enforcement officials, in their efforts  
14 to enforce the criminal laws and to apprehend those  
15 engaged in criminal activities may resort to traps,  
16 decoys, deception and may also use informants. Artifices  
17 and stratagems may be employed to catch those  
18 engaged in criminal enterprises.

19 The nature of some types of crime, and this  
20 would be particularly so in the instance of  
21 narcotic offenses, are carried out in great secrecy  
22 and deviousness and is such that the wary criminal can  
23 rarely be detected unless such methods are used by law  
24 enforcement officers.

25 Such methods are not in any way forbidden by



1 law and are often necessary in the detection and  
2 prosecution of certain crimes.  
3

4 Whether or not you personally agree with the  
5 policy of using such methods is not an issue and is not  
6 before you. The fact that government officials or  
7 employees merely afforded opportunities or facilities  
8 to one who is ready and willing to violate the  
9 law when the opportunity presents itself does not  
10 constitute entrapment.

11 When, for example, the government has  
12 reasonable grounds for believing that a person is  
13 engaged in the illicit sale of narcotics, it is  
14 not unlawful entrapment for a government agent to  
15 pretend to be someone else and to offer directly or  
16 through an informer or other decoy to purchase  
17 narcotics from such suspected person. However, in  
18 their efforts to enforce the laws, the government officials  
19 nor employees may not entrap an innocent person who,  
20 except for the government's inducement, would not  
21 engage in the criminal conduct charged.

22 Thus, if the criminal design or purpose  
23 originates with government officers and they implant in  
24 the mind of an otherwise innocent person the  
25 disposition to commit the offense charged and induce its

commission, the prosecution may not succeed.

In short, entrapment occurs only when the criminal conduct was the product of the creative activity of law enforcement officials, that is, if they initiate, invite or induce or lure an otherwise innocent person to commit a crime and to engage in criminal conduct, and if that occurs the government may not avail itself of the fruits of those instigating activities.

Such conduct offends the public conscience, and so while a crime may have been committed, the government is estopped from benefiting by the improper conduct of its own officers and employees.

Here the defendant contends she was free of any criminal purpose to deal in cocaine transactions, that she had no previous disposition, intent or purpose to engage in such criminal activity but was induced to engage in the conduct charged against her by the activity of government officials or employees.

The government denies this and contends that the defendant was merely afforded the opportunity on each occasion to commit the offense and that she readily and willingly responded thereto and engaged in each transaction which is the subject of the two counts

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2 of the indictment without inducement of any kind,  
3 that she acted entirely on her own.

4 In this case Detective Mahone is a  
5 government agent and Mrs. Greenberg, during the period  
6 you find she acted as an informer for the government,  
7 may also be considered a government employee.

8 If you find some evidence that a government  
9 agent, by initiating the illegal conduct, induced the  
10 defendant to engage in such conduct, then the  
11 government must prove beyond a reasonable doubt that the  
12 inducement was not the cause of the crime, that is, the  
13 defendant was ready and willing to commit the crime  
14 without any persuasion when the opportunity offered  
15 itself and that, in fact, she did so.

16 Now, the proof on behalf of the government  
17 may be evidence of a willingness to commit the crime  
18 charged as evidenced by one's ready response to the  
19 offered opportunity.

20 The government emphasizes, according to the  
21 testimony of its witnesses, that the defendant engaged  
22 in a second transaction, this time, as it contends,  
23 without the intervention of the informer; moreover,  
24 that the defendant in her discussions with the  
25 undercover agent showed knowledgeability of the



1 narcotics trade when she asked Detective Mahone if  
2 he wanted street stuff or stuff that could be cut,  
3 and also when on another occasion she stated that she  
4 had the best drugs in the market.  
5

6 The defendant, on the other hand, claims that  
7 the second transaction did involve the informant and,  
8 further, it was the informant who told her to make  
9 inquiry of the kind of stuff the detective wanted.

10 The government, upon the entire case, urges  
11 that the evidence establishes there was no inducement  
12 of any kind and that the defendant was at all  
13 times ready and willing and, in fact, did engage in  
14 the two narcotics transactions without any inducement.

15 In sum, it contends that on two  
16 separate occasions the defendant's readiness to engage  
17 in them, her discussions with respect thereto, the  
18 manner of handling the transactions establish beyond  
19 a reasonable doubt that she was engaged in the sale  
20 and distribution of narcotics and in no respect was she  
21 induced to enter into such transactions.

22 The defendant has already noted she contends  
23 she was never involved in any cocaine transactions other  
24 than those charged in the indictment and that these were  
25 induced solely through the urging and actions of the

informant.

You have just heard the lawyers sum up and discuss their contentions and it would be unnecessary duplication to review in detail the testimony of each witness. I have not detailed all the evidence upon which the government and defendant rely to support their respective contentions. All evidence, whether or not I have referred to it or the lawyers have referred to it, is important and must be considered by you.

In my outline of the testimony I sought to state the substance thereof with complete accuracy. However, and I think I mentioned this earlier, if perchance your recollection of the testimony differs from mine, by all means you must rely upon your own independent recollection.

The versions of the government and defense witnesses are in such sharp divergence on key points that it may be suggested this irreconcilable conflict is not due to forgetfulness or lack of recollection. Both versions with respect to essential points cannot be true. You are called upon to decide the fact issues and what are the true facts. How do you decide this?

I mentioned at the start of the trial that it would be desirable and important for you not only to

listen but to look at the witnesses as they testified. I then told you, without knowing a single fact pertaining to the case, it was likely that certain matters would be in dispute, and so it has occurred. I think I suggested to you yesterday, also, that it is not so much what a person says as how he says it, that sometimes a person's own words may belie his own statements.

Your determination of the issue of credibility very largely must depend upon the impression that a witness made upon you as to whether or not he or she was telling the truth or giving you an accurate version of what occurred.

I often say to jurors when you walk into the door of this courtroom and sit in a jury box while the trial is going on or when you are deliberating in the jury room you have your common sense, your good judgement and your experiences with you.

You decide whether or not a witness was straightforward and truthful, whether he or she attempted to conceal anything, whether a witness has a motive to testify falsely, whether there is reason why he might want to color his or her testimony.

In passing upon a witness' credibility you may consider whether one has a prior criminal record.



1  
2 However, it by no means follows that such a person has  
3 not testified truthfully before you. The ultimate  
4 question for you to decide with respect to every witness  
5 is, did the witness sworn before you tell the truth  
6 before you, the substantial truth as to events?

7 The law permits, but does not require, a  
8 defendant to testify on her own behalf.

9 The defendant has taken the witness stand.  
10 Obviously she has a deep personal interest in the  
11 result or the outcome of this prosecution. Indeed, it  
12 is fair to say she has the greatest stake in its outcome.  
13 Interest creates a motive for false testimony. The  
14 greater the interest, the stronger the motive, and a  
15 defendant's interest in the result of her trial is of  
16 a character possessed by no other witness. In  
17 appraising a defendant's credibility you may take that  
18 fact into consideration.

19 However, it by no means follows that  
20 simply because a person has a vital interest in  
21 the end result that she is not capable of telling a  
22 truthful and straightforward story. It is for  
23 you to decide to what extent, if at all, her interest  
24 has affected or colored her testimony.

25 The fact that the government witnesses

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2 were government employees does not entitle their  
3 testimony to any greater consideration or weight than  
4 that accorded to the testimony of any other witness.  
5 You will evaluate the credibility of all witnesses  
6 in the same manner.

7 I believe that I made some mention of that  
8 yesterday during the course of selection of one of  
9 the jurors.

10 If you find that any witness -- and this  
11 applies to government and defense witnesses alike --  
12 wilfully testified falsely as to any material fact,  
13 you have a right to reject the testimony of that witness  
14 in totality or to accept only that part or portion which  
15 lends itself to your belief or which you may find  
16 corroborated by other evidence in the case.

17 There has been testimony with respect to  
18 the use by undercover agents of an informant or  
19 informer who gave information as to the defendant and  
20 identified her and was the means of introduction.

21 These services are availed of by government  
22 agents at times to obtain information or introductions  
23 to persons suspected of violating the law. I made some  
24 reference to this before.

25 Again, there are certain types of

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times where, without the use of informants, detection would be extremely difficult. The use of secret informers or undercover agents is a legitimate and proper practice of law enforcement and justified in the public interest. Indeed, as I have already mentioned, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution.

The law from time immemorial has been permitted the use of informers, provided the rights of defendants are not violated. Whether or not you approve of the use of informers in efforts to detect alleged law violations is not to enter into your deliberations.

The government, to prevail, must prove with respect to each count, the essential elements by the required degree of proof as already explained in these instructions. If it succeeds as to a particular count, your verdict should be guilty. If it fails, it should be not guilty.

You must consider each count separately and render a separate verdict as to each. The verdict with respect to each count must be unanimous.

Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and



these instructions of law.

Under your oath as jurors, in the event the evidence warrants a verdict of guilty, you cannot allow a consideration of the sentence which may be imposed by the Court in the event the defendant is convicted to enter into your deliberations or to influence or play any part in your verdict. Your duty is to decide the case solely and only upon the evidence. In the event of a conviction, the duty and responsibility of imposing a sentence is that of the Court.

Each juror is entitled to his or her own opinion, but each should, however, exchange views with their fellow jurors. That is the very purpose of jury deliberations, to discuss and consider the evidence, to listen to arguments of fellow jurors, to present your individual views, to consult with one another and to reach a verdict based upon the evidence and the Court's instructions of law.

If you have a point of view that differs from that of fellow jurors and if upon further discussion you are satisfied that the evidence and the law requires that you change a point of view previously held, there is no reason why you should not change a point of view, provided always your final vote represents

your own individual conscientious judgment as to how the case should be decided upon the law and the evidence.

You might wait where you are. Counsel may come up.

(At the bench.)

THE COURT: Do you want to state your exceptions.

MR. SLEPION: I don't have any.

MR. BATCHELDER: Your Honor, the government would ask a conscientious avoidance of knowledge charge.

THE COURT: I gave enough.

MR. BATCHELDER: All right.

(In open court.)

THE COURT: We can go off the record now.

(Discussion off the record.)

(Two alternate jurors excused.)

(Two marshals were duly sworn.)

THE COURT: All right, members of the jury, you may go inside.

(At 3:25 P.M., the jury entered the jury room to deliberate upon a verdict.)

\* \* \*

(At 4:05 P.M., a note was received from

the jury.)

(In open court, jury present.)

THE COURT: I have a note from the jury which reads, "Murphy's testimony and Keefe's testimony."

The court reporter, if he has that, may read the testimony.)

(Testimony of Murphy and Keefe was read to the jury.)

THE COURT: All right, you may return to the jury room and continue your deliberations, members of the jury.

(At 4:30 P.M., the jury returned to the jury room to continue to deliberate upon a verdict.)

(Court Exhibit 1 was marked for identification.)

(At 6:10 P.M., in open court, jury present.)

(Jury roll call, all present.)

THE CLERK: Madam Forelady, have you agreed upon a verdict?

THE FORELADY: We have.

THE CLERK: How do you find?

THE FORELADY: Guilty on both counts.

THE CLERK: I am sorry.

THE FORELADY: Guilty.



1  
2 THE CLERK: On both counts?

3 THE FORELADY: Yes.

4 THE CLERK: Ladies and gentlemen of the  
5 jury, listen to your verdict as it stands recorded.

6 You say you find the defendant guilty on  
7 count one and guilty on count two, and so say you all.

8 THE COURT: Any requests?

9 MR. SLEPION: May we have the jury polled,  
10 your Honor?

11 THE COURT: The jury may be polled.

12 THE CLERK: Ladies and gentlemen of the  
13 jury, listen to your verdict as it stands recorded.  
14 You say you find the defendant guilty on count one and  
15 guilty on count two.

16 (Each juror, upon being asked, "Is  
17 that your verdict," answered in the affirmative.)

18 THE CLERK: Jury polled, your Honor,  
19 verdict unanimous.

20 THE COURT: Members of the jury, you have  
21 been here a full day. We don't need this on the  
22 record.

23 (Discussion off the record.)

24 (Jury excused.)

25 (Court Exhibit 2 marked for identification.)

1 THE COURT: The Court will require a  
2 pre-sentence report in this case.  
3

4 MR. SLEPION: Your Honor, I do have a motion  
5 now to set aside the verdict as contrary to the weight  
6 of evidence.

7 THE COURT: The motion is denied.

8 We will put this down for November 8th.

9 MR. BATCHELDER: Your Honor, at this time  
10 the defendant is out on \$2,000 personal recognizance  
11 bond secured by \$200 cash. She has indicated and made  
12 representations to the government that she will appear  
13 at the time. The government does not ask for her remand  
14 at this time.

15 THE COURT: The defendant may be continued  
16 on the existing bail.

17 Mr. Slepion, would you see that your client  
18 gets to the probation office. I don't know if there is  
19 anybody there.

20 THE CLERK: Not today, tomorrow morning.

21 THE COURT: Tomorrow morning.

22 MR. SLEPION: Very well, your Honor.

23 (Court adjourned.)

24 \*

\*

\*

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Frederick Martorell	69	72		
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Jovana Guardi	112	125	147	
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STATE OF NEW YORK     )  
                                      : SS.  
COUNTY OF RICHMOND    )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 6 day of Jan. 1975 deponent served the within *Appendix* upon *U.S. Attorneys*

attorney(s) for *appellee*

in this action, at *Foley Sq*  
*NY C*

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

*[Signature]*  
.....  
ROBERT BAILEY

Sworn to before me, this  
16 day of Jan. 1975,

*William Bailey*  
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County  
Commission Expires March 30, 1976